FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2022/0149**
Property	**:**	**19 Turner Street, London E1 2AU**
Applicant	**:**	**Parveen Gul**
Representative	**:**	**In person**
Respondents	**:**	**Foyzun Nessa and Khalisur Rahman**
Representative	**:**	**Olivia Motin-Bashar (friend of Ms Nessa)**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Mr S Wheeler MCIEH CEnvH**
Date of Hearing	**:**	**26 January 2023**
Date of Decision	**:**	**23 February 2023**

DECISION

<u>Description of hearing</u>

This was a face-to-face hearing.

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Decisions of the tribunal

(1) The tribunal orders the Respondents jointly and severally to repay to the Applicant the sum of £2,520.00 by way of rent repayment.

(2) The tribunal also orders the Respondents to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00 paid by her.

(3) The above sums must be paid by the Respondents to the Applicant within 21 days after the date of this determination.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondents under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The basis for the application is that the Respondents were controlling and/or managing a house in multiple occupation (an "**HMO**") which was required under the Housing Act 2004 ("**the 2004 Act**") to be licensed at a time when it was let to the Applicant but was not so licensed. Based on the information before the tribunal, the claim is that the Respondents were committing an offence under section 72(1) of the 2004 Act.

3. The Applicant's claim is for repayment of rent paid during the period from 15 October 2021 to 18 April 2022 in the amount of £3,300.00.

Applicant's case

4. The Applicant has provided a copy of a letter from the local housing authority dated 7 April 2022 stating that the owner of the Property had not applied for a licence under the 2004 Act, that the owner might therefore be committing a criminal offence, and that the local housing authority would be arranging an inspection.

5. The hearing bundles also contain an exchange of emails between Olabimpe Dalemo, an Environmental Health Officer at the local housing authority (Tower Hamlets), and Olivia Motin-Bashar, the Respondents' representative, between 22 April and 15 June 2022. In that exchange, Ms Dalemo states that she has been trying to ring Ms Motin-Bashar several times, that the local housing authority has evidence that the Property has been used as an HMO without a licence and that the owner is therefore committing a criminal offence and that she must ensure that a licence is obtained without further delay in order to avoid prosecution.

6. Ms Dalemo's email of 3 June 2022 refers to the local housing authority having visited the Property on 12 April 2022 and having concluded that the Property was being occupied by unrelated individuals forming more than two households and that the Property was an HMO which was required to be licensed. That email specifically states that the local housing authority has concluded that the Property is privately rented and is not occupied by the owner and their relatives.

7. There is also an undated copy of an email from Muhammed Williams at the local housing authority stating that he has looked at Ms Dalemo's case after her inspection of the Property and that he agrees with her that the Property requires a mandatory HMO licence.

8. The Applicant has in addition provided a copy of an email from Ms Motin-Bashar dated 15 December 2021 confirming that the Applicant was a tenant at the Property.

9. The Applicant's hearing bundle also contains correspondence regarding the failure to protect the Applicant's deposit and a failure to return it.

10. At the hearing, Ms Gul said that there were two other households living at the Property when she was in occupation, and she gave such details as she had. Contrary to the Respondents' written submissions, she denied that the Property was occupied by any 84-year-old lady purporting to be the owner.

11. As regards the parties' conduct, the Applicant said at the hearing that she had paid the rent on time and had been a good tenant. By contrast, the Respondents' behaviour had not been good. The toilet was dirty, there were mice in the kitchen and a dead mouse on the first floor. There was a big problem with bed bugs in the mattress; she complained about this and the Respondents arranged for the room to be sprayed, but this did not help. She asked for a new mattress and was eventually given a dirty second-hand mattress from a short-let room. She complained again but nothing further was done to resolve the problem. The hearing bundle contains photographs showing the effects of the bed bugs on her arms.

12. She also said that there was no smoke alarm and there were flies in the bin. Over time, the Respondents' agent's behaviour towards her worsened and she threatened the Applicant.

13. The Applicant said that she was not aware of the Respondents having had any relevant convictions and that she had no evidence of the Respondents' financial circumstances.

Respondents' case

14. The Respondent states that the Applicant was a lodger and that a tenancy was never agreed. In any event no tenancy could be created as one of the Respondents, Ms Nessa, was residing in the Property when the Applicant was a lodger, and there were only total of two households (the Applicant, and Ms Nessa with her family).

15. The Respondents' representative states that the Applicant approached her via a friend asking if she could help her find a place to live on a temporary basis. She then remembered her 84-year-old aunt, Ms Nessa, who lived alone at the Property. Although her aunt had family members visiting her, she thought it might be convenient if the aunt had someone to talk to, and therefore she allowed the Applicant to reside with her as a temporary lodger.

16. The Applicant ended up staying longer than expected, and from the moment that she moved in she started complaining and being a nuisance and taking this favour of temporary accommodation for granted. She then started contacting the local housing authority.

17. In correspondence with Olabimpe Dalemo of the local housing authority, Ms Motin-Bashar stated that the Property did not require a HMO licence as the owner and family were living there and the Applicant was only a temporary lodger.

18. Ms Motin-Bashar also stated that the Applicant's actions were causing her aunt severe health deterioration as she was in hospital for kidney disease and other old age-related illnesses. Ms Motin-Bashar added that she was herself going through extreme anxiety and depression due to having had cancer a few years previously and having a terminally sick father-in-law back home whose treatment she was funding.

19. At the hearing, Ms Motin-Bashar accepted that there was nothing in writing to show that the Property was occupied at the relevant time by Ms Nessa. She also accepted that the people referred to by the Applicant as living at the Property did actually live there, although Ms Motin-Bashar said that they did not pay rent and were distant relatives of Ms Nessa. She said that Ms Nessa lived on the first floor and used the ground floor facilities. In cross-examination, she accepted that Ms Nessa was not actually her aunt, albeit that she was used to referring to her as 'auntie'.

20. Ms Motin-Bashar accepted that there was no smoke alarm. In relation to the bugs complained about by the Applicant, she did not accept that they came from the bed. She said that the Applicant was unhygienic, although when pressed she was unable to supply any evidence.

21. In relation to the deposit, Ms Motin-Bashar admitted that she had initially pretended that she was not holding the deposit. She had done this because she was at the time angry with the Applicant. She also confirmed that the deposit had not yet been returned.

Follow-up points at hearing

22. The Applicant said that she had never seen Ms Nessa and that Ms Nessa did not live at the Property. She added that if, as Ms Motin-Bashar accepted, there were other people at the Property the whole time and if – as Ms Motin-Bashar claimed – these people were related to Ms Nessa, how could it be that the Applicant was taken on as a lodger to keep Ms Nessa company?

23. It was common ground between the parties at the hearing that the amount of rent paid by the Applicant in relation to the period of claim was £3,300.00.

Relevant statutory provisions

24. Housing and Planning Act 2016

Section 40

(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 ...

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from	section 1(2),	eviction or harassment of

	Eviction Act 1977	(3) or (3A)	occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) ...

Section 44

(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.

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

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

Housing Act 2004

Section 72

(1) 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 ... but is not so licensed.

(5) In proceedings against a person for an offence under subsection (1) … it is a defence that he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) … .

Section 263

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—
(a)receives (whether directly or through an agent or trustee) rents or other payments from—
(i)in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
(ii)in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
(b)would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

Tribunal's analysis

25. The Respondents' representative accepts that the Property was not licensed at any point during the period of the claim. She also does not deny that the Respondents were the landlord for the purposes of the 2016 Act, nor that they were between them a "person having control" of the Property and/or a "person managing" the Property, in each case within the meaning of section 263 of the 2004 Act. However, the Respondents do not accept that the Property required an HMO licence. This is because, in their submission, the Property was at all relevant times occupied by Ms Nessa, one of the Respondents.

26. Having considered the evidence, we are satisfied beyond reasonable doubt that the Property did require an HMO licence for the whole of the

period of claim. There is correspondence from the local housing authority expressing the clear and unequivocal view that an HMO licence was required. This view was expressed by two separate senior officers at the local housing authority, and that view was maintained after receiving vehement and clear written representations from the Respondents' representative and after having inspected the Property.

27. Ms Nessa was initially described by Ms Motin-Bashar as her aunt, but it then transpired that she was not her aunt, although we accept that Ms Motin-Bashar was not necessarily confirming that she was an actual blood relative. Ms Motin-Bashar initially seemed to suggest that there were no occupiers other than Ms Nessa and the Applicant, but then she accepted that there were other occupiers. Then her position seemed to alter again from these other occupiers being occasional lodgers to their being actual occupiers. Her claim that the Applicant was allowed to stay at the Property in part so that she could keep Ms Nessa company appears to be at odds with her statement that the other occupiers were relatives of Ms Nessa who one might have thought would be fulfilling that role themselves.

28. There is no reference to Ms Nessa in correspondence to support Ms Motin-Bashar's contention that she occupied the Property. There is no evidence of any complaints having been made to or through Ms Nessa, which is surprising if she was an owner occupier, even allowing for the possibility that she was elderly. There is no witness statement from Ms Nessa, nor any evidence that she lived at the Property at the relevant time apart from Ms Motin-Bashar's unsupported assertions that she did.

29. In relation to the local housing authority's inspection, in an attempt to discredit this evidence Ms Motin-Bashar has suggested that the Applicant deliberately arranged for the inspection to take place when Ms Nessa was out. First of all it is highly implausible that the Applicant would have been able to organise this – either at all or at least without making the local housing authority suspicious – and secondly it is unclear how Ms Nessa could have been out of the Property throughout the inspection given her apparently extreme frailty. A very much more likely explanation is that Ms Nessa was not actually living at the Property.

30. In conclusion on this point, we are satisfied beyond reasonable doubt that Ms Nessa was not living at the Property at any point during the period of claim. We are also satisfied beyond reasonable doubt that the Applicant was in occupation and paying rent for the whole of this period, and we would just note in passing that the absence of a written tenancy agreement does not prevent someone from being a tenant for the purposes of the rent repayment legislation. As regards the requirement for an HMO licence, whilst the Applicant's hearing bundle could have been complied in a more helpful manner we recognise that

she is a litigant in person. Therefore, whilst there is a lack of analysis as to the type of licence needed and why, the evidence from the local housing authority is in our view sufficient on this point. As noted above, two separate senior officers at the local housing authority have expressed the clear and unequivocal view that an HMO licence was required despite receiving vehement and clear written objections from the Respondents' representative and after having inspected the Property.

31. We are therefore satisfied beyond reasonable doubt that the Property required an HMO licence throughout the period of the claim, that the Respondents had control of and/or were managing the Property throughout the relevant period and that the Respondents were "a landlord" during this period for the purposes of section 43(1) of the 2016 Act.

The defence of "reasonable excuse"

32. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 2 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

33. In this case, the Respondents do not argue that they had a reasonable excuse. Instead, they argue that no licence was needed, and as already noted we are satisfied that a licence was in fact needed. There is no evidence before us that the Respondents did have a reasonable excuse for failing to license the Property, and it is clear from various decisions of the Upper Tribunal such as *Thurrock Council v Daoudi (2020) UKUT 209 (LC)* that mere ignorance of the law (if indeed that is what it was in this case) does not amount to a reasonable excuse for these purposes. Therefore, we do not accept that the Respondents had a reasonable excuse for the purposes of section 72(5).

The offence

34. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed HMO under section 72(1) of the 2004 Act is one of the offences listed in that table.

35. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. Having

determined that the Respondents did not have a reasonable excuse for failing to license the Property, we are satisfied beyond reasonable doubt that an offence has been committed under section 72(1), that the relevant part of the Property was let to the Applicant at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

36. Based on the above findings, we have the power to make a rent repayment order against the Respondents.

37. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

38. In this case, the Applicant's claim relates to a period not exceeding 12 months. There is no evidence that any part of the rent was covered by the payment of housing benefit and the Respondents do not dispute that the rental amounts claimed were in fact paid by the Applicant.

39. We are satisfied that the Applicant was in occupation for the whole of the period to which the rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is £3,300.00, this being the amount of rent paid in respect of the period of claim.

40. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

41. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

42. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a possible case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

43. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

44. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

45. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

46. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

47. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

48. In *Hallett v Parker and others [2022] UKUT 165 (LC)*, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should significantly reduce the amount to be repaid.

49. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
(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 compared to other examples of the same type of offence; and
(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).

50. Adopting the *Acheampong* approach, the whole of the rent in this case means the whole of the rent paid by the Applicant out of her own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit.

51. In this case, there is evidence of the Respondents having paid utilities and so it is appropriate for an amount to be subtracted to reflect the cost of utilities. We do not have detailed evidence of the amount spent by the Respondents on utilities, but the decision in *Acheampong* is authority for the proposition that as an expert tribunal we can and should make an assessment as to the likely cost of utilities. We estimate that over a whole year the cost of utilities for a property of this nature with this level of usage would be in the region of £1,500. The period of claim is 6 months, and we estimate that the Applicant would have consumed about one-fifth of the utilities. It therefore follows that the sum of £150.00 should be deducted for utilities. This reduces the maximum amount of rent repayable from £3,300.00 to £3,150.00.

52. As regards the seriousness of the offence, whilst it could be argued based on the maximum criminal penalty available that there are offences covered by section 40(3) of the 2016 Act which can give rise to a greater criminal sanction, a failure to license is still a serious offence. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicant did not suffer direct loss through the Respondents' failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

53. As for the seriousness of this offence compared to others of the same type, in our view it was reasonably serious but far from being the worst of its type. There were no smoke alarms, which is a serious matter, but there is no other evidence of serious safety issues. The Property was not overall in bad condition, but there is credible evidence of bed bugs and a lack of hygiene in the common parts.

54. Taking the above factors together, we consider that the starting point for this offence should be 70% of the maximum amount of rent payable.

55. As regards the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

<u>Conduct of the parties</u>

56. There is no credible evidence before us of the Applicant's conduct having been anything other than good.

57. As regards the Respondents' conduct, there is the failure to obtain a licence over a considerable period of time and a lack of truthfulness compounding this failure. There was also the problem of the failure to deal properly with the bed bugs, pretending not to have received the

deposit, not yet having returned the deposit and a lack of cleanliness in the common parts. There were other problems too, but we accept on the basis of the evidence before us that the Respondents did deal with some of those problems.

Financial circumstances of the landlord

58. There is no evidence before us regarding the Respondents' financial circumstances.

Whether the landlord has at any time been convicted of a relevant offence

59. The Respondents have not been convicted of a relevant offence.

Other factors

60. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. We are not persuaded that there are any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

61. The four-stage approach recommended in *Acheampong* has already been set out above. The amount arrived at by going through the first two of those stages is £3,150.00. As for the third stage, namely the seriousness of the offence, this reduces the amount to 70% of that sum, subject to the section 44(4) factors.

62. There is nothing to deduct for the Applicant's conduct as there is no credible evidence before us that the Applicant's conduct was anything other than good. The Respondents' conduct has not been good. They failed to obtain a licence over a considerable period of time and their lack of truthfulness in dealing with this matter has compounded this failure. There were also the problems of their failure to deal properly with the bed bugs and their representative pretending not to have received the deposit. In our view, this justifies increasing the repayment award from 70% to 80% of the maximum amount payable.

63. The Respondents have not at any time been convicted of a relevant offence, but it is clear from the Upper Tribunal decision in *Hallett v Parker* that this by itself should not be treated as a credit factor. We have no evidence regarding the Respondents' financial circumstances.

64. Therefore, taking all of the factors together, we consider that the rent repayment order should be for 80% of the maximum amount of rent payable. This is 80% x £3,150.00, which amounts to £2,520.00. Accordingly, we order the Respondents to repay to the Applicant the sum of £2,520.00.

Cost applications

65. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondents reimburse the application fee of £100.00 and the hearing fee of £200.00.

66. As the Applicant has been successful in their claim, albeit that there has been a deduction from the maximum payable, we are satisfied that it is appropriate in the circumstances to order the Respondents to reimburse these fees.

Name: Judge P Korn **Date:** 23 February 2023

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

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

D. 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.