



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **BIR/00FY/HMK/2020/0015**

HMCTS code (paper, video, audio) : **V:CVPREMOTE**

Property : **2 Bedford Grove, Nottingham, NG6 9DE**

Applicant(s) : **Alicja Katarzyna Szefler**

Respondent : **Robert Kaniu and Eve Kaniu**

Type of application : **Application for a rent repayment order by tenant**
Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016

Tribunal members : **Judge D. Barlow**
Robert Chumley-Roberts MCIEH, J.P
Mr V Chadha MRICS MBA MCI Arb FCIH

Date of decision : **30 September 2020**

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal refer to are within the bundles of documents filed with the parties' statements of case, the contents of which have been fully considered by the Tribunal.

SUMMARY OF DECISION

The Tribunal orders the Respondent to pay the Applicant the sum of £7,140.00 by way of a rent repayment order and to reimburse the Applicant with the application and hearing fee in the sum of £300.00 within 28 days from the date of this decision.

REASONS

BACKGROUND

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Housing Act 2004 ('the 2004 Act'), Part 3, introduced selective licensing of residential accommodation by local housing authorities.
3. There is no dispute between the parties that the Property falls within Nottingham City Council's selective licencing scheme for private rented houses, which came into force on 1 August 2018 and should have been licensed pursuant to s85(1) of the 2004 Act from that date.
4. Under section 95(1) of the 2004 Act a person who controls or manages a house which is required to be licensed under s85(1), but is not so licensed, commits an offence and is liable on summary conviction to a fine.
5. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 40(1) of the Housing and Planning Act 2016 ("the 2016 Act"), the (former) occupiers of an unlicensed house may apply to the First-tier Tribunal for rent repayment orders. The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed an offence under section 95(1) of the 2004 Act, whether or not the landlord has been convicted.
6. The Applicant is the former tenant of the Property, a privately-owned house in Bedford Grove Nottingham.
7. The Respondents are the registered owners of the Property.
8. An application was received by the Tribunal on 1 April 2020 from the Applicant, who seeks a rent repayment order under section 41 of the 2016 Act. The Applicant alleges that the Respondent was controlling or managing a house which was required to be licensed under s85(1) of the 2004 Act and was not so licensed.

9. The Applicant occupied the Property from 11 October 2016 until August 2020, initially with her former husband, under an Assured Shorthold tenancy agreement granted on 11 October 2016, for an initial fixed term of 12 months. She has paid a rent of £850.00 per month by standing order/direct debit to the bank account of the Respondents' letting agent, for her period of occupation.
10. The Applicant is requesting rent repayment for a period of twelve months from 1 January 2019 to 31 December 2019, during which she paid 12 payments of £850.00 totalling £10,200.00

THE LAW

11. The relevant provisions of the 2016 Act, are as follows –

S40. Introduction and key definitions

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

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

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

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

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
6	<i>The 2004 Act</i>	<i>S95(1)</i>	<i>Control or management of an unlicensed house</i>

...

Under section 95(4) of the 2004 Act in proceedings against a person for an offence under section 95(1) of the 2004 Act it is a defence that the person had a reasonable excuse.

...

s41 Application for rent repayment order

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

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

...

s43 Making of rent repayment order

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

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

...

s44 Amount of order: tenants

4(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. The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section in s 40(3)</i>	<i>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</i>
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(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.

THE PROPERTY

12. Due to the Coronavirus pandemic the Tribunal was unable to carry out an inspection of the Property but, based on the Application Form and submissions of the parties, understands that it is a detached four bedroomed

house, with gas fired central heating. There is understood to be gardens to the front, side and rear and a detached garage.

13. The Tribunal makes no further assumptions regarding the accommodation

PRELIMINARY ISSUE

14. The Respondent sought leave by email, received after closure of the court office on 29 September 2020, to make late written submissions. The submissions concerned some disputed termination issues following a final inspection report on the condition of the Property dated 30 August 2020. The allegations concerned costs the Respondent anticipated would be incurred to remediate alleged wants of repair and decoration, the removal of unwanted items left by the Applicant and some gardening work, which the Respondent estimated might cost some £1270. There was also an allegation of unpaid rent totalling 196.15 and unpaid Council Tax of £52.01 which appeared to relate to a dispute concerning the actual date of cessation of the tenancy.
15. In considering the Respondents request to adduce late evidence the Tribunal had particular regard to its procedural rules. Rule 3 of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013 require that cases to be dealt with fairly, justly and proportionately, having regard to the complexity and the resources of the parties. Rule 3 goes on to state that the Tribunal should avoid unnecessary formality and seek flexibility in proceedings; ensuring, so far as practicable, that parties are able to participate fully in the proceedings. This does not however mean that parties should normally be allowed to adduce evidence without giving the other side the opportunity to properly consider it and respond.
16. The final inspection took place on the 30 August 2020, which was after the last date provided in Directions for the parties to provide evidence. However, the Respondent took no steps to seek leave to adduce late evidence on this report until effectively, the morning of the hearing, some four weeks later. The Applicant confirmed that she had not received the Respondents late submissions and had not had any opportunity to consider them.
17. Rule 18(6) permits the Tribunal to exclude evidence that is submitted where it is unfair to allow it to be admitted.
18. Tribunal considered that although the evidence might have some relevance to any consideration of the conduct of the parties, it was unlikely to make a material difference to any order it might make, given that the amounts claimed were largely estimated by the Respondent. In addition, the issues were a matter of contract between the parties that the Respondents could pursue against the Applicant in any event.
19. Furthermore, the Tribunal considered that it would be procedurally unfair to the Applicant for the Tribunal to have regard to evidence that she had not seen prior to the hearing. It therefore excluded the Respondents' late submissions and evidence and determined to proceed with the hearing without having regard to it.

THE PARTIES SUBMISSIONS

The Applicants' submissions

20. In her written submissions the Applicant confirmed that she was seeking a rent repayment order on the grounds that the landlord (Respondent) had failed to apply for a selective licence.
21. In support, the Applicant submitted an email from the Housing Licensing and Compliance, Community Protection Team of Nottingham City Council dated 27 February 2020, confirming that at that date, the Local Authority had not received a Selective Licence Application for the Property.
22. The Applicant provided copies of her bank statements showing the transfer of 12 payments of £850.00 totalling £10,200.00 between 5 January 2019 and 6 December 2019.
23. The Applicant also submitted that there had been repair issues at the Property going back to 2016 when she had first rented it. In support the Applicant provided various exchanges of email between the Applicant and the Respondents letting agents, initially Bairstow Eves but from 2017 on, McClean Property Services. The emails, which cover a period from 2016-2019, raise a number of maintenance issues including previous tenant's rubbish, damp, water leaks, a broken gate, broken locks, dirty carpets, poor decorative order, a leaking toilet and lack of hot water due to intermittent boiler problems. Included, was an exchange of emails between Bairstow Eves and the Respondent dated 29 November 2016 in which the letting agent berates Mr Kaniu for his lack of responsiveness to the maintenance issues and stresses how accommodating the tenants had been and how well they were looking after the Property. The email confirms that the tenants had spent £1,500 on repairs that were not their responsibility and suggest that he might want to consider some reduction in rent to redress this.
24. The Applicant said in evidence that she had probably spent some £5000.00 in total, during the tenancy on carpets, flooring, decorations and repairs. She acknowledged that the Respondent had agreed to contribute to some of the cost by allowing her to pay half the monthly rent on two occasions.
25. When questioned about her late payment of rent in April and August 2019 the Applicant stated that she had paid the rent late to force the Respondent to address her ongoing complaints about the boiler and the lack of hot water.

The Respondent's Submissions

26. Mr Kaniu's statement of case confirms that the Property is the Respondents' former matrimonial home. It has been let since 2015 when Mr and Mrs Kaniu moved to Kenya in connection with Mr Kaniu's employment. Mr Kaniu confirmed at the hearing that he also owns 2 other rental properties in the West Midlands, one of which is a licensed HMO.
27. Mr Kaniu accepted that the Property should have been licenced under Nottingham City Council's selective licensing scheme from 1 August 2018, but said that he was in hospital for a period of some 4 months between June and October 2018 and then intermittently hospitalised for a total of 3 weeks over a period of 6 months. He was therefore hampered through illness, in addressing the licence application, from June 2018 until June 2019.
28. Mr Kaniu confirmed that his letting agents had notified him of the need to apply for a licence sometime in July or August 2018 and had reminded him

of the requirement several times. They had also explained the consequences of his not applying for a licence. When asked why he, or Mrs Kaniu, had not simply instructed the letting agent to apply for a licence, Mr Kaniu said that his illness had seriously affected his ability to deal with day to day matters and that being in hospital had taken a heavy toll on Mrs Kaniu, who was not in the right state of mind to address the issue, due to her concerns about his health.

29. The Tribunal asked why, from July 2019 on, the Respondents' failure to licence the Property continued. Mr Kaniu said that following his illness they decided to relocate to the UK, and proposed moving back to the Property. Mr Kaniu submitted that the illness had left him with a hospital bill of about \$20,000 USD. His employer had paid half the bill on a salary sacrifice scheme which meant financially, he was unable to leave his employment until August 2020. The Property was yielding a loss and he just couldn't afford to pay for the licence during this period. In fact, Mr and Mrs Kaniu remained in Kenya at the date of the hearing, waiting for sufficient funds to allow them to return.
30. In relation to the Applicant's allegations concerning issues with lack repair and maintenance of the Property, Mr Kaniu said that he had been abroad in 2016 when the previous tenants moved out and thought that Bairstow Eves would deal with these issues. They were authorised under the agency agreement to use the rent to meet the costs of urgent repairs and only needed to refer to him on non-urgent repairs. Furthermore, his recollection was that the Applicant had been very keen to get in and had agreed to sort out the initial issues with the Property in exchange for a rent-free period. However, when pressed Mr Kaniu appeared to acknowledge that the only rent allowance actually made, was the 2 half-months allowed against the tenants' expenditure on carpets and flooring.
31. The Tribunal explained to Mr Kaniu that the emails from his own agents, complaining about his failure to respond promptly or deal with repair issues, did not look good and asked him to comment. Mr Kaniu did not accept that he had been dilatory. In part he blamed the agents for trying to shuffle of responsibilities they knew were rightly theirs, on him. He also submitted that he was justified in not rushing to approve large items of expenditure on items such as a new boiler because the less expensive repairs he had sanctioned had proved effective. He did not dispute that there had been issues with the boiler and the hot water system, but believed they had eventually been satisfactorily addressed.
32. Mr Kaniu complained about the behaviour of the Applicant in continually contacting him rather than the agents about day to day issues, which he found quite stressful. He also submitted that much of the work she regarded as his responsibility were in fact improvements to the Property. He said that the Property was let in a good standard of repair but the Applicant wanted to improve it. He didn't criticise this, but thought it unfair that he should be criticised for not wanting to pay for her to upgrade it. Mr Kaniu also said that the local authority had not asked for any improvements to be made, which he believes indicates it was in an acceptable condition.
33. In response, the Applicant said that she'd had to contact the Respondent direct because he was not responsive to the agent's emails, that she had spent long periods without a properly functioning hot water system and that the Respondent had been very slow to sanction the repairs to the boiler.

34. Mr Kaniu is employed as an IT Manager in Kenya, Mrs Kaniu works in the home. Mr Kaniu filed with his statement, a detailed schedule of his monthly income and expenditure for the year ending 1 March 2020 and confirmed at the hearing that his current financial position in Kenya remains materially unchanged. He also provided details of his outstanding liabilities. The income/expenditure schedule was not supported by any documentary evidence of his actual income or outgoings. When asked how, on his limited income, Mr Kaniu was supporting certain of the larger items of expenditure, he confirmed that he had negotiated payment holidays for some while others were slipping into arrears. The Respondents' income schedule shows a monthly deficit over expenditure of -\$650.00.
35. There is a separate schedule for the Property covering the same period, which shows a deficit of rent over expenses (including mortgage) of -£3,473.09, for the year ending 1 March 2020. Mr Kaniu confirmed that the Property is not currently rented and that mortgage arrears are accruing. The Respondent did not provide any written evidence of his two other rental properties, possibly because they were first mentioned by Mr Kaniu in response to a question from the Tribunal about his finances. He said that both were mortgaged, one yielded a small profit of about £30.00 per month and the other a small loss, because the rents had not been reviewed for some time.
36. Mr Kaniu did provide some documentary evidence to support his list of current liabilities which total some £34,792.00. They include a debt to Barclays Bank UK Plc of £26, 805.00, now secured by charging order registered against the Property. Mr Kaniu also has several small county court judgements registered against him at the address of the Property and some credit card debts. Mr Kaniu said that he is currently unable to address these debts but is planning to, on their return to the UK later this year, following the sale one of the properties.
37. The Respondent confirmed that he had never been convicted of a housing offence.

THE TRIBUNAL'S DETERMINATIONS

38. The Tribunal considered four questions: –
- (i) Was the Tribunal satisfied beyond reasonable doubt that the Respondent had committed an offence under section 95(1) of the 2004 Act, in that at the relevant time he was a person who controlled or managed a house that was required to be licensed under Part 3 of the 2004 Act, but was not so licensed.
 - (ii) Was the Applicant entitled to apply to the Tribunal for a rent repayment order.
 - (iii) Should the Tribunal exercise its discretion to make a rent repayment order.
 - (iv) What should be the amounts of any such order.

39. Offence under s95(1) of the 2004 Act.

- (i) In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the Property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 95(1) of the 2004 Act for the following reasons:
- (ii) Throughout the period from 1 August 2018 to April 2020, when Mr Kaniu applied for a temporary exemption notice, the Property was within an area of selective licencing for private rented houses, which came into force on 1 August 2018 and should have been licensed pursuant to s85(1) of the 2004 Act.
- (iii) The Property was not so licensed.
- (iv) The Respondent was the person having control of and/or managing Property as defined in s263 of the 2004 Act.
- (v) The Respondent admitted that he had committed the offence but put forward reasons for the delay in making an appropriate application. Those reasons being Mr Kaniu's illness in 2018/2019 and his subsequent precarious financial position. The Tribunal therefore must consider whether those reasons amount to a defence of reasonable excuse under s95(4) of the 2004 Act. The Tribunal found that the Respondent engaged letting agents throughout on a full management basis, who advised him of the need to make an application and of the consequences of failing to do so. Although Mr Kaniu's illness was a period of immense strain for the family which might have justified a short delay, it cannot provide a reasonable excuse for a failure to take any action for a period in excess of twelve months, particularly where competent letting agents are in place that could have assisted. So far as finances are concerned, if a landlord can't afford to pay for a licence then he cannot lawfully continue to engage in the licensable activity that is required to be licensed. It cannot ever be a reasonable excuse for a landlord to say, I can't afford the licence. The answer is, well you cannot then privately let your property and if you do, you commit an offence.

40. Was the Applicant entitled to apply to the Tribunal for rent repayment orders?

The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence during a period when the Property was let to the Applicant; and the offence was committed in the period of 12 months ending with the day on which the application was made (1 April 2020).

41. Should the Tribunal exercise discretion to make an order?

Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a rent repayment order. Given the circumstances of the offence and the need to encourage compliance with licensing regimes,

the Tribunal finds it appropriate for the Tribunal to exercise its discretion to make an order.

42. What should be the amounts of such order?

43. Under section 44 of the 2016 Act, the amount of an order must relate to rent paid in a period, not exceeding 12 months, during which the landlord was committing an offence under section 96(1) of the 2004 Act. The Applicants' claim satisfies that condition.
44. The amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. The Applicant claims rent repayment for a period of twelve months from 1 January 2019 to 31 December 2019, during which she paid 12 payments of £850.00 totalling £10,200.00. The Tribunal accepts that the relevant period is twelve months. The Applicant has provided bank statements showing the rent transfers and the Respondent does not dispute having received twelve months' rent.
45. The Tribunal's Directions required the parties to provide details of any universal credit/housing benefit paid to the Applicants. No party asserts that the Applicant was in receipt of universal credit/housing benefit during the applicable period. The Tribunal is therefore satisfied that the maximum amount of the rent repayment order is £10,200.00.
46. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that, in certain circumstances, the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
47. In determining the amount of the rent repayment order the Tribunal must have regard to subsection 44(4) of the 2016 Act, which requires that the Tribunal take particular account of:
- (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.
48. In exercising discretion, the Tribunal has taken account of the decision of the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Distilling those observations, in so far as they are not displaced by the wording of section 44, the Tribunal has proceeded on the basis that:
- (i) there is no presumption that there will be a 100% refund of payments made. In fact, as section 46 prescribes the circumstances in which the Tribunal must order the full amount, section 44 clearly envisages that a lesser refund is likely.
 - (ii) the total length of time during which the offence was being committed bears upon the seriousness of the offence and therefore, the conduct of the landlord.
 - (iii) the benefit obtained by the tenant in having had the accommodation is not a material consideration.
 - (iv) the Tribunal has a general discretion which must be exercised judicially. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to licence will merit a larger order than instances of inadvertence.

Although all landlords should know the law, a landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

49. The Tribunal also considered the decision of the Upper Tribunal in *Mr Babu Rathinapandi Vadamalayan v Edward Stewart and others* [2020] UKUT 0183 (LC). Judge Cooke at [11] observed that there was no requirement that a payment in favour of Tenant in respect of RRO should be reasonable, and at [12] that this meant the starting point for determining the amount of rent is the maximum rent payable for the period in question. Judge Cooke went onto say at [14] and [15] that:

“It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament’s intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord’s profits was – as the President acknowledged at his paragraph 26 –not the only purpose of a rent repayment order even under the provisions then in force. 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.

Judge Cooke concluded at [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”.

50. The 2016 Act extended the scope of rent repayments orders with an emphasis upon rogue landlords not benefiting from the letting of sub-standard accommodation; it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.
51. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to decide the actual amount payable on the circumstances of the case. The Tribunal must, in particular, take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a “housing offence” (section 44(4)).
52. The Tribunal finds, in relation to the Respondent’s conduct and financial circumstances that:
- (a) The Respondent is not a commercial landlord with a large portfolio. Mr Kaniu works as an IT manager but owns three properties which he lets out, one being his former matrimonial

- home. The Respondent nonetheless runs this small portfolio as a business, through professional property agents in the UK.
- (b) The Respondent let the Property unlawfully from 1 August 2018 until April 2020 when he applied for a temporary exemption notice.
 - (c) The Respondent was aware of the requirement to licence the Property from 1 August 2018 and is an existing licence holder for one of his other properties.
 - (d) The Respondent did not have a reasonable excuse for not having a licence during this period but the Tribunal takes account of Mr Kaniu's long period of illness.
 - (e) The Respondent was not assiduous in his obligation to attend promptly to items of disrepair at the Property and the Tribunal does not doubt the Applicant's evidence in this regard. However, the Applicant's evidence did not detract from the overall good condition of the Property and while the evidence did indicate a degree of laxness on the part of the landlord, it was not sufficient to determine that the Property was not in a good and safe condition.
 - (f) The Applicant's conduct did not contribute to the offence.
 - (g) The Respondent appears to be of good character with no previous convictions.
 - (h) The evidence provided by the Respondent of his financial status was insufficient for the Tribunal to determine that the Respondent would experience undue hardship if an RRO was made in favour of the Applicant. The Tribunal took particular note of the following factors:
 - i. The Respondents schedule of income and outgoings was uncorroborated by any documentary evidence that could allow the Tribunal to give sufficient weight to an undue hardship argument. Copy salary slips, bank statements, and rental statements would have allowed the Tribunal to consider the schedule with greater confidence that it provided a complete picture of the Respondents finances. It was noted that the Respondents parlous financial position still afforded spending of \$250.00 per month on family grooming, family entertainment and clothing.
 - ii. No information on the Respondents other two properties was volunteered, until Mr Kaniu was questioned by the Tribunal. He provided no documentary evidence concerning the value or yield from the properties and did not show the income and outgoings in respect of the properties on any of his schedules.
 - iii. Mr Kaniu confirmed that he was not making any payments towards the debts, many of which appear to have defaulted in 2016, the year after the Respondents moved to Kenya. The CCJ's were registered in 2016 2017 and 2018.
 - iv. The Respondent is undoubtedly in a measure of debt that Mr Kaniu confirmed can only be addressed by the sale of one or more of his properties, which he hopes to address following his return to the UK at the end of the year. The

Tribunal has taken account of the Respondents level of indebtedness when considering what is an appropriate sum.

53. The Tribunal determines that this is not a case which justifies an award of the maximum amount of £10,200.00. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description. However, the Respondents' offence weighs heavily in favour of making a substantial RRO which is supported by Judge Cooke's comment in *Vadamalayan*: "*Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence*".
54. The Tribunal finds that the Respondent is a professional landlord who was aware that the Property required licensing. The Property was without a licence throughout the period from the 1 August 2018 until April 2020. These facts together with the finding that, apart from the failure to licence the Property, the Respondent was a responsible landlord who provided accommodation of reasonable/good standard; and taking account of the Respondents current financial circumstances; the Tribunal considers an order of **£7,140.00** is the appropriate sum. The Tribunal determines that sum ordered balances the objective of a "fiercely deterrent scheme", the status of professional landlord and the length of the offending, against the mitigating circumstances found in favour of the Respondent and his precarious financial position.
55. As the Applicant has been successful with her Application for a RRO, the Tribunal considers it just that the Respondent reimburses the application fee and hearing fee totalling £300.00.

Decision

56. The Tribunal orders the Respondent to pay the Applicant the sum of **£7,140.00** by way of a rent repayment order and to reimburse the Applicant with the application and hearing fee in the sum of **£300.00** within 28 days from the date of this decision.

Name: Judge D. Barlow

Date: 17 November 2020

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).