FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UM/HMG/2020/0002
Property	:	Flat 36 Enterprise Place, 175 Church Street East, Woking , Surrey GU21 6AD
Applicant	:	Dr Niranjan Sriram Balachandran
Representative	:	Mr Alex Ivory of Flat Justice Community Interest Company
Respondent	:	Mr Yik Wai Tung
Representative	:	Ms Brooke Lyne of Counsel instructed by Zhong Lun Law Firm Regulated and Authorised by the Solicitors Regulation Authority
Type of Application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016
Tribunal Member(s)	:	Judge Tildesley OBE
Date and venue of the Hearing	:	1 April 2020 Telephone Conference
Date of Decision	:	15 May 2020

DECISION

Summary of Decision

1. The Tribunal orders the Respondent to pay the Applicant the sum of £5,700.00 by way of a rent repayment order and to reimburse the Applicant with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

Background

2. On 10 February 2020 the Applicant applied under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO) in the sum of £14,242.19 plus reimbursement of costs of £300.00. The rent claimed of £14,242.19 related to the rent paid of £1,200.00 per month for the period of 12 months less four days from 1 April 2018 to 27 March 2019.

3. The Applicant has occupied the property at Flat 36 Enterprise Place, 175 Church Street East, Woking, Surrey GU21 6AD under the terms of assured shorthold tenancy since 9 April 2016. The original tenancy agreement was dated 11 April 2016 for a fixed term of 12 months. The agreement has been extended for fixed 12 month periods by means of supplementary agreements. The Tribunal understands that the Applicant continues to live at the property. Under the tenancy the Applicant is required to pay the Respondent rent of £1,200.00 per calendar month in advance. The Tribunal further understands that the rent has remained at the same level throughout the Applicant's occupation of the property.

4. The Respondent is the long leaseholder of the property with a term of 150 years less three days from 17 May 2007. The Respondent's title is registered under title number SY784369 as from 18 November 2009. The Respondent originally bought the property for his daughters who were studying in the UK at the time. From 1 September 2014 to the current day the Respondent engaged Leaders on his behalf to let and manage the property on a "Tenant Rent Collect and Fully Managed" basis. A copy of the agreement with Leaders was not exhibited.

The Dispute

5. The Applicant alleged that the Respondent had committed an offence of controlling or managing an unlicensed house for the period 1 April 2018 to 27 March 2019 contrary to section 95(1) of the Housing Act 2004.

6. The Respondent accepted that from 1 April 2018 the property required a licence following the introduction of a selective licensing scheme adopted by Woking Borough Council. The Respondent also accepted that an application for licence was not made until 28 March 2019.

7. The Respondent contended that he had the defence of reasonable excuse to the alleged offence. In the alternative, the Respondent pleaded that the amount of the Order should be minimal.

8. The Respondent in his statement of case put forward two further defences to the application.

   (i) The Council had issued a licence for the property from 1 April 2018. The Respondent argued that the licence had been granted so as to have retrospective effect, and, therefore, could not have committed the offence. Counsel did not pursue this line of argument at the hearing. The Respondent accepted that this was an administrative error on the part of the Council, and the Council did not have the power to grant licences retrospectively.

   (ii) The Respondent stated that he was not a person required to have a licence because the Council concluded that it was Leaders, the Respondent's managing agent, who should be licensed. Mr Ivory for the Applicant submitted that the Council's decision to name Leaders on the licence had no relevance to the question of whether the Respondent had control or managed the property for the purposes of section 95(1). Counsel did not pursue this argument at the hearing.

The Proceedings

9. On 12 February 2020 Judge Tildesley directed the parties to exchange their statements of case and fixed a hearing for the 23 March 2020 at Havant Justice Centre.

10. On the 18 March 2020 the Tribunal wrote to the parties to advise them that the hearing had been cancelled due to the Coronavirus Public Health Emergency. The Tribunal asked the parties whether they would consent to a determination on the papers. The Respondent did not consent because he would be denied the opportunity to make oral submissions especially given the fact he was based overseas and had also instructed Counsel to make representations. The Respondent indicated that Counsel could attend via telephone or video link if this was easier.

11. On 20 March 2020 Judge Tildesley directed that the hearing would take place on 1 April 2020 by means of telephone conference. Judge Tildesley indicated that such a hearing did not require the parties consent because the definition of hearing in the Tribunal Procedure Rules 2013 included a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication.

12. Mr Alex Ivory of Flat Justice represented the Applicant at the hearing on 1 April 2020. The Applicant was unable to attend because he is a doctor and was required at the hospital. The

Tribunal did not consider his attendance essential. The Applicant had not submitted a witness statement. Ms Brooke Lyne of Counsel represented the Respondent. The Respondent was also in attendance together with his solicitor, Ms Lin Hou. The Respondent gave evidence in relation to his witness statement.

13. Judge Tildesley explained that the hearing was in his home, and that the proceedings would be recorded by BT Meet Me and a note would be taken. Unfortunately, only the last five minutes of the hearing was recorded on BT Meet Me which was due to an operational error on Judge Tildesley' part. Judge Tildesley expressed his worries at the hearing that he may have not recorded it. Ms Lyne of Counsel explained that she had kept a note of the proceedings, which would be available if required.

14. The Tribunal had before it the Application and attachments dated 10 February 2020, the Respondent's bundle dated 12 March 2020, and the Applicant's reply dated 20 March 2020.

Consideration

15. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provided decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

16. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.

17. The Tribunal is satisfied that the Applicant met the requirements for making an application under section 41 of the Act. The Applicant alleged that the Respondent had committed an offence of control or management of an unlicensed house under section 95(1) of the Housing Act 2004 whilst the property was let to him. An offence under section 95(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 April 2018 to 27 March 2019 which was in the period of 12 months ending on the day in which the Applicant made his application on 10 February 2020.

18. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Has the Respondent committed a specified offence?

19. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified

offences. The relevant offence in this case is under s.95(1) of the Housing Act 2004, "control or management of an unlicensed house".

20. The Applicant produced a letter from the Housing Standards Department of Woking Borough Council dated 15 January 2020. The Council said that the property was within a Selective Licensing Scheme Area which came into effect on 1 April 2018 and was unlicensed for the period 1 April 2018 to 27 March 2019.

21. Mr Ivory contended that as the Respondent was a person having control of or managing the property which was unlicensed during the period 1 April 2018 to 27 March 2019 he had committed the offence under section 95(1) of the Act 2004 Act.

22. Counsel accepted that the Respondent met the criterion of a person having control or management and that the property was not licensed during the period 1 April 2018 to 27 March 2019 . Counsel, however, contended that the Respondent had a reasonable excuse for not licensing the property which is a defence under section 95(4) of the 2004 Act.

23. The Respondent's evidence was that he had purchased the property in 2009 originally for his two daughters who were studying in the UK. The Respondent said that he was persuaded by his two daughters to retain the property after they finished their studies in case they wanted to return to the UK for employment. The Respondent decided to let the property. As the Respondent lived and worked in Hong Kong he appointed Leaders, a well-known Estate Agent and Letting Agent, to manage the property on a full-management basis.

24. The Respondent asserted that he was not aware of the introduction of the selective licensing scheme introduced by Woking Borough Council in April 2018. The Respondent said that any notifications about the scheme would have been sent to the property. The Respondent insisted that the Applicant did not forward the communications from the Council to Leaders or to him. The Respondent stated that he first became aware of the licensing requirement on 22 March 2019 when Ms Carole Wallis from Leaders emailed to notify him that the Council had been in contact about the failure to obtain a licence. The Respondent said that as soon as he learned of the requirement to obtain a licence he immediately instructed Leaders to submit the application on his behalf. The Council received the application on 28 March 2019. The application for the licence could not be completed quicker because of the nature of the information required by the form which took time to compile.

25. The Respondent acknowledged that Ms Wallis' email of 22 March 2019 referred to a letter dated 15 February 2018 which was

addressed to the Respondent at his home address in Hong Kong [75]. Ms Magnus of Leaders in the letter advised the Respondent that Woking Borough Council were introducing selective licensing to an area of Canalside Ward and that all private rented property in the scheme area would require a valid licence application to be made before 1 April 2018. Ms Magnus explained the consequences of not making a valid application on time, a risk of a financial penalty of up to £30,000 and a rent repayment order. Finally Ms Magnus set out the services that Leaders could provide when completing the application form but emphasising that Leaders was unable to complete the application process on his behalf and that he would have to ensure that the licence application is granted.

26. The Respondent asserted that he never received the letter dated 15 February 2018 from Leaders. The Respondent said that he usually communicated with Leaders by email and telephone. The Respondent considered it was strange that Leaders chose to communicate by post rather than by email which was the established form of communication. The Respondent said that he had asked Leaders for proof of postage which they have not provided. The Respondent also stated that Leaders have not provided him with an explanation for why they did not email him a copy of the letter and follow it up with him by telephone. The Respondent insisted that if he had received the letter or any notification from the Council he would have obtained a licence immediately.

27. The Respondent asserted that he was a responsible landlord who took his regulatory obligations very seriously. The Respondent stated that he instructed an agent to manage the property on his behalf to ensure that he complied with any regulatory requirements or obligations. According to the Respondent, the failure to licence was a genuine error that arose from lack of information and correspondence not being received.

28. The Respondent acknowledged that he had produced no evidence from Leaders to corroborate his statements about the agreed method of communication by email and telephone, and about his assertions that Leaders were unable to prove that the letter of 15 February 2018 had been posted. The Respondent accepted that the address on the letter was his correct address in Hong Kong.

29. Counsel submitted that the Respondent was entitled to rely on his lack of knowledge about the requirement for the property to be licenced as a reasonable excuse. Counsel insisted this was not a case of a landlord ignoring his responsibilities. Counsel pointed to the facts that the Respondent lived in Hong Kong and had appointed a reputable agent to manage the property on his behalf. According to Counsel, the Respondent was entitled to rely on his agent to ensure that he complied with his regulatory obligations as a landlord particularly as he lived outside the UK. Counsel asserted

that the evidence showed that the agent did not tell the Respondent about the property requiring a licence until 22 March 2019, and as soon as the Respondent found out he took action to licence the property. Counsel argued that the Applicant should not benefit from the Respondent's omission to licence the property because the Applicant had failed to forward correspondence to the Respondent and his agent about the selective licensing scheme delivered to the property.

30. Counsel drew a distinction between mandatory HMO licensing and selective licensing. Counsel contended that under selective licensing there was a greater risk that a landlord, particularly an overseas landlord would fall foul of the regulatory requirements. Under selective licensing the obligation to licence by definition was confined to a specified local area which would provide the focus for communications about the scheme, and would only have relevance to landlords and tenants living in that area. In contrast, the mandatory scheme applied nationwide and so would receive wider publicity and the risk of not knowing about the scheme would be much lower than a selective licensing scheme.

31. Counsel submitted that this was not a case where the Respondent was pleading ignorance of the law which Counsel accepted could not amount to a reasonable excuse. Counsel insisted that where it could be demonstrated that a landlord had acted responsibly in respect of his regulatory obligations and that the lack of knowledge was not his fault then those circumstances may constitute a reasonable excuse. Counsel contended that this was such a case. The Respondent was an overseas landlord who took his responsibilities seriously. The Respondent had appointed a reputable agent to manage the property and the agent had let him down. The nature of selective licensing meant that his opportunities to find out about the requirements were limited particularly as he did not live locally. Counsel submitted that these circumstances when viewed in their totality amounted to a reasonable excuse on the part of the Respondent for managing or controlling an unlicensed property.

32. Mr Ivory for the Applicant submitted that the burden was on the Respondent to prove that he had a reasonable excuse. According to Mr Ivory the Respondent had failed to discharge the burden. Mr Ivory asserted that the Respondent could not rely on the fact that he lived abroad and used an agent to manage the property. Mr Ivory stated that the Respondent knew that when he purchased the property he would be subject to regulatory obligations as a landlord and that it was up to him to make sure that he complied with them.

33. Mr Ivory disputed the Respondent's lack of knowledge about the obligation to licence the property. Mr Ivory pointed to the fact that his Agent know about the requirement and had informed the Respondent in a letter dated 15 February 2018 about the selective

licensing scheme and the obligation to take out licence. Mr Ivory cast doubts about the Respondent's assertion that he never received the letter. Mr Ivory said it was impossible for the Applicant to disprove a negative. It was up to the Respondent to establish credible evidence that he never received the letter. In this respect the Respondent's failure to obtain corroboration from Leaders spoke volumes about the reliability of his assertions against Leaders. Equally the Respondent had adduced no evidence to substantiate his allegations about the Applicant not passing on correspondence from the Council about the selective licensing scheme.

34. Mr Ivory challenged the relevance of Counsel's distinction between mandatory and selective licensing. Mr Ivory pointed to the fact that there would have been widespread statutory consultation about the scheme before it was introduced. Mr Ivory contended that the differential approach to selective and mandatory licensing as proposed by Counsel would undermine the purposes of the legislation which were to protect tenants and to deter landlords from breaching their obligations. This was so because the differential approach carried the suggestion that a failure to comply with a selective licensing scheme should be treated with less opprobrium than a corresponding failure to comply with a mandatory scheme.

35. Mr Ivory emphasised that the property was unlicensed for almost one year. In his view the longer the time period for which the offence was committed the more reluctant the Tribunal should be before finding that the Respondent had a reasonable excuse.

36. The Tribunal raised with Counsel why the Respondent had not included evidence from Leaders to corroborate his version of his dealings with them. Counsel said that there was a contractual dispute with Leaders, and that the Tribunal was entitled to infer from the evidence that Leaders did not post the letter of 15 February 2018 to the Respondent.

37. Counsel, helpfully, referred to two recent decisions of the Upper Tribunal, *I R Management Services Limited v Salford Council [2020] UKUT 81(LC)* and *Nicholas Sutton (1) Faiths' Lane Apartments Limited (in administration) (2) v Norwich City Council [2020] UKUT 90(LC)* which dealt with the question of reasonable excuse as a defence to the imposition of financial penalties under section 249A of the Housing Act 2004. The decisions have equal application to the corresponding situation under RROs when the defence of reasonable excuse is pleaded.

38. The Tribunal applies the following principles from those decisions which apply to this case, and where appropriate have been adapted to reflect the citation of the alleged offence relied upon by the Applicant:

a) The proper construction of section 95(1) of the 2004 Act is clear. There is no justification for ignoring the separation of the elements of the Offence and the defence of reasonable excuse under section 95(4).

b) The offence of failing to comply with section 95(1) is one of strict liability subject only to the statutory defence of reasonable excuse.

c) The elements of the offence are set out comprehensively in section 95(1). Those elements do not refer to the absence of reasonable excuse which therefore does not form an ingredient of the offence, and is not one of the matters which must be established by the Applicant.

d) The burden of proving a reasonable excuse falls on the Respondent, and that it need only be established on the balance of probabilities.

e) The burden does not place excessive difficulties on the Respondent to establish a reasonable excuse. In this case the Respondent relied on the fact that he did not know the property required to be licensed. Only the Respondent can give evidence of his state of knowledge at the time. The Applicant, on the other hand, has no means of knowing the state of knowledge of the Respondent. In Mr Judge's words it is very difficult for the Applicant to disprove a negative.

f) Whether an excuse is reasonable or not is an objective question for the Tribunal to decide. Lack of knowledge or belief could be a relevant factor for a Tribunal to consider whether the Respondent had a reasonable excuse for the offence of no licence. If lack of knowledge is relied on it must be an honest belief (subjective test). Additionally there have to be reasonable grounds for the holding of that belief (objective).

g) In order for lack of knowledge to constitute a reasonable excuse as a defence to the offence of having no licence it must refer to the facts which caused the property to be licensed under section 95(1). Ignorance of the law does not constitute a reasonable excuse.

39. **The Tribunal decides having regard to the facts of this case and the application of the principles cited above to those facts, that the Respondent did not have the defence of reasonable excuse to the offence of control and or management of an unlicensed house under section 95(1) of the 2004 Act.**

40. The Tribunal has reached this conclusion on four distinct grounds in the alternative. Each ground is a finding in its own right, so if

one proves to be wrong, the other three still apply. In order for the Tribunal's conclusion that the Respondent did not have a reasonable excuse, it would have to be established that each finding was not justified on the application of the law to the specific facts.

41. The first ground: the Tribunal is satisfied that the Respondent's lack of knowledge was in fact ignorance of the law. The Tribunal finds what the Respondent is actually asserting is that he did not know that the law had changed on the 1 April 2018 requiring his property to be licensed under the selective licensing scheme, and that he only found out the legal requirement to licence in March 2019. Counsel argued that the Respondent's defence was not mere ignorance of the law but that he was not responsible for his lack of knowledge and blamed his agent and the local nature of selective licensing. The Tribunal reminds itself that in order for knowledge to constitute a reasonable excuse it must relate to the facts of the offence. The Tribunal considers that reliance on agent and the local nature of selective licensing has nothing to do with the facts of the offence. They may constitute mitigation but are not constituents of the offence. The Tribunal highlights this point by the example of the agent letting the property without the knowledge of the Respondent. The Respondent's lack of knowledge of the letting goes to the core of the offence, and in that case his lack of knowledge may constitute a reasonable excuse. In contrast the Tribunal, considers that the Respondent's assertion that he did not know the law because his agent failed to tell him is equivalent to him saying that he did not know the relevant law. The Tribunal is satisfied that the reasonable excuse put forward by the Respondent is that he was ignorant of the change in law requiring him to licence the property.

42. The second ground: the Respondent is not entitled to rely on "lack of knowledge" because it is agreed that his agent knew that the property required a licence. It is agreed that the Respondent appointed Leaders as his agent to manage the property. The agreement gave full authority to Leaders to act on the Respondent's behalf. It follows that as Principal, the Respondent is bound by the actions of his agent, and that knowledge of his agent can be imputed to the Respondent as principal.

43. The third ground: the Respondent knew that the property required licensing because he was informed by letter on 15 February 2018 by Leaders that the property required a licence by 1 April 2018 and that he did not action the letter until he was reminded by Leaders on 22 March 2020. The Respondent asserts that he did not receive the letter and that the agreed form of communication between themselves was by email and phone. Weighed against the Respondent's assertion are that the Tribunal finds (1) the letter of 15 February 2018 was correctly addressed to the Respondent's home in Hong Kong (2) Carole Wallis of Leaders in the email of 22 March 2018 states that the letter was sent and attached it to the

email (3) The Respondent in his response to Carole Wallis' email at 22:50 on the same day and in the subsequent emails exhibited in the Respondent's bundle made no comment about not receiving the letter of 15 February 2018 (4) The Tribunal infers that in the absence of challenge the Respondent accepted that he had received the letter in February 2018. A person in the Respondent's position would have recognised instantly the implications of that letter when it was sent with the email and it would be reasonable to expect he would have disputed it in his response to Carole Wallis' email (5) the Respondent produced no documentary evidence to support his contention that he is currently in dispute with Leaders about sending the February 2018 letter (6) the Respondent adduced no documentary evidence to corroborate his assertion that the agreed form of communication with Leaders was by email and or telephone. The burden was on the Respondent to prove that he did not receive the letter of 15 February 2018 and that he had a reasonable excuse. The Tribunal is satisfied that when the Respondent's assertion is weighed against the findings in (1) to (6) above the Respondent had failed to discharge the burden on the balance of probabilities. The Tribunal, therefore finds that he received the letter of 15 February 2018 informing him that the property required a licence, and that he was aware from that date of his obligation to licence the property no later than the 1 April 2018.

44. The fourth ground: The Respondent pleaded as his reasonable excuse that he had known about the licensing requirement then he would have made the application (or instructed someone to do so on his behalf) before the scheme came into force. Counsel in her submissions argued that the Respondent's lack of knowledge was not his fault and that he relied on others. Arguably it might be said that Counsel has rephrased the basis of reasonable excuse from one of lack of knowledge to one of reliance on others to keep him informed. If that is the case the defence of reasonable excuse fails for the reasons given in the second and third grounds.

45. The Tribunal now turns to the original question: Has the Respondent committed the offence of not having a licence pursuant to section 95(1) of the 2004 Act? The Respondent accepts that he was required to licence the property from the 1 April 2018. Further the Respondent did not apply for the licence until 28 March 2019. The offence is one of strict liability. The Tribunal has found that the Respondent did not have a reasonable excuse.

46. **The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent committed the offence of a person having control of or managing a house which is required to be licensed but is not so licensed from 1 April 2018 to 27 March 2019 pursuant to section 95(1) of the 2004 Act**.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?

47. The amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that the Respondent committed the offence from the 1 April 2018 to 27 March 2019, a period of 12 months less 4 days.

48. The Applicant paid the Respondent a total rent of £14,400.00 for the 12 month tenancy.

49. In order to arrive at the maximum amount payable, the Tribunal is required to deduct from the £14,400.00, the equivalent of four days rent which amounts to £157.81 The maximum amount payable by the Respondent under a RRO is £14,242.19.

What is the Amount that the Respondent should pay under a RRO?

50. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent in his capacity as landlord, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.

51. The Tribunal refers back to the Respondent's evidence recorded at [23] that he had purchased the property in 2009 originally for his two daughters who were studying in the UK. The Respondent said that he was persuaded by his two daughters to retain the property after they finished their studies in case they wanted to return to the UK to work. The Respondent decided to let the property. As the Respondent lives and works in Hong Kong he appointed Leaders, a well-known Estate Agent and Letting Agent, to manage the property on a full-management basis.

52. The Respondent added that he did not rent out any other properties in the UK. The Respondent said that he was retired and his only income in the UK was the rent from the property. The Respondent stated that he paid UK tax on the rent at a rate of 20 per cent and a management charge of 10 per cent of the gross rent to Leaders.

53. There was no evidence that the accommodation provided by the Respondent was substandard.

54. The Tribunal is satisfied that the Applicant did not by his conduct contribute to the offence. The Respondent suggested that the Applicant did not forward correspondence from the Council about the selective licensing scheme. The Tribunal finds that the Respondent's suggestion was speculative and unsubstantiated.

55. Mr Ivory invited the Tribunal to place no weight on the fact that the Respondent lived overseas, and on his financial circumstances. Mr Ivory asserted that the Tribunal should take into account the duration of the offence which was almost 12 months, and that the offence was a deliberate contravention of legal requirements designed to provide safe and good quality accommodation to tenants. Mr Ivory submitted that the circumstances of the case justified the making of a RRO in the maximum amount.

56. Counsel argued that the amount of the RRO should be a nominal amount. Counsel contended that if the Tribunal did not find a reasonable excuse in the Respondent's favour it was still entitled to take account of the fact the failure to licence was a genuine error that arose from lack of information and correspondence not received. The Respondent had no reason not to comply with the Licensing requirements and would have avoided paying a fee for the licence if he had done so before 1 April 2018. The Respondent applied for the licence as soon as he found out about the requirement to licence in March 2019 and the length of offending was in reality a matter of days rather than the one year.

57. Counsel argued that a contravention of a selective licensing scheme was a mitigating feature of the offence. Counsel said that the likelihood of failure to comply was higher with a selective licensing scheme than with the mandatory licensing scheme for HMOs because it would not be that well-known unless the landlord actually resided in the area that the selective scheme covered.

58. Counsel suggested that it was relevant to have regard to the fact that the Respondent bought the property for his daughters not as an investment, and that he kept the property in case his daughters returned to the UK for employment.

59. Counsel argued that the Respondent was a responsible landlord who took his responsibilities seriously, and had engaged a professional agent to manage the property in his absence. Counsel relied on the fact that the Respondent had not been previously convicted of a housing-related offence or of any offence. Finally Counsel urged the Tribunal to take into account the Respondent's financial circumstances that he was retired and his only income in the UK was the rent from the property.

60. The Tribunal starts its determination on the size of the RRO by considering the decision of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301. The then President of the Upper Tribunal referred to Hansard to discover the purpose of the legislation for introducing RROs in favour of tenants. The President decided that the RROs have a number of purposes, namely:

> "to enable a penalty in the form of a civil sanction to be imposed in addition to the fine payable for the criminal offence of operating an unlicensed HMO; to help prevent a landlord

> from profiting from renting properties illegally; and to resolve the problems arising from the withholding of rent by tenants".

61. The President identified the following factors that were relevant to the amount. The citation below is a summary of the main points:

> " That the amount ordered had to be considered in the context of the identified purposes. The following points were among those that should be borne in mind. A tribunal should have regard to the total amount that the landlord would have to pay by way of a fine and under an RRO. There was no presumption that the RRO should be for the total amount received by the landlord during the relevant period; the tribunal had to take an overall view of the circumstances in determining what amount would be reasonable. An RRO was limited to the period of 12 months ending with the date of the occupier's application, but the tribunal ought also to have regard to the total length of time during which the offence was being committed. The fact that the tenant would have had the benefit of occupying the premises during the relevant period was not a material consideration or, if it was, one to which significant weight should be attached. Payments made as part of the rent for utility services counted as part of the periodical payments in respect of which an RRO could be made, but as the landlord would not himself have benefited from them, it would only be in the most serious case that they should be included in the RRO. Section 74(6)(d) required the tribunal to take account of the landlord's conduct and financial circumstances. The circumstances in which the offence was committed were always likely to be material. A deliberate flouting of the requirement to register would obviously merit a larger RRO than instances of inadvertence. A landlord who was engaged professionally in letting was likely to be more harshly dealt with than the non-professional".

62. 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 and it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order. In this regard the decision in *Parker* is indicative of the factors that the Tribunal should have regard to when fixing the amount.

63. 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 by taking into the circumstances of the case, having particular regard to specific factors.

64. The Tribunal finds in relation to the Respondent's conduct and financial circumstances:

a. The Tribunal is bound by its findings on the issue of reasonable excuse. The Tribunal, therefore, proceeds on the basis that the Respondent knew in February 2018 that he had to licence the property from 1 April 2018 and that his offending continued for almost 12 months.

b. The fact that the Respondent's offence related to selective licensing made no difference to the gravity of the offence. The Respondent in his capacity as landlord has an obligation to comply equally with regulatory requirements imposed locally as well as those imposed nationwide.

c. Although the period for commission of the offence was almost 12 months, the Tribunal is satisfied that the Respondent's contravention was a "one-off". The Council did not impose a financial penalty for his offence. The Respondent had no previous convictions, and there was no evidence apart from his failure to licence the property that he flouted his responsibilities as a landlord.

d. The Respondent made proper arrangements for the management of the property by appointing a reputable agent.

e. There was no evidence that he let sub-standard accommodation or sought to profiteer from the renting of the property. The evidence showed that the rent had remained the same throughout the period of occupation by the Applicant.

f. The Respondent had purchased the property for his daughters whilst they were studying in the UK, and had retained it in case his daughters returned to the UK for employment. The Respondent did not own any other property in the UK. The Tribunal is satisfied that he was not a professional landlord.

g. The Respondent paid tax at the rate of 20 per cent on the income received in the form of rent, and a management charge of 10 per cent on the gross rent received. The Respondent supplied no evidence of other deductions from the rent received. The Respondent's nett annual income from the property was £10,080.00. The Respondent declared that he had no other source of income in the UK.

65. The Tribunal finds that the Applicant was not complicit in the circumstances giving rise to the Respondent's failure to obtain a licence for the property. The fact that the Applicant had renewed the tenancy for two further periods of twelve months had no bearing upon the amount of the RRO.

66. In this case the Tribunal determines that the maximum amount payable by the Respondent under a RRO is £14,242.19. The Tribunal then has to consider whether the findings on the Respondent's conduct and financial circumstances, and the Applicants' conduct merit a reduction in the maximum amount payable.

67. The Tribunal finds that the Respondent did not meet the definition of a rogue landlord who knowingly rents out unsafe and substandard accommodation. In the Tribunal's view, awards of the maximum amount should be reserved for those landlords who meet the description of rogue landlords. The Tribunal, therefore, does not consider this is a case for an order of the maximum amount

68. Following the decision in *Parker,* the Tribunal considers the starting point should be the net amount received by the Respondent which is £10,080.00 with an adjustment for the four days.

69. Although the Tribunal has found that the Respondent knew that the property required a licence and that his offending continued for almost 12 months, those findings have to be weighed against those in favour of the Respondent that, his offence was a "one off", no history of previous offending or flouting his responsibilities as a landlord, responsible approach by the appointment of a reputable managing, and not a professional landlord. The Tribunal considers the mitigation outweighs the aggravating features of the offence, which justifies a further deduction in the region of 30 per cent of the gross maximum amount of £14,242.19. Thus the amount is £14,242.19 less deductions of £4,272.65 (Tax & Management Charge) and £4,272.65 (Mitigation) which equals £5,696.89 rounded up to £5,700.00.

70. As the Applicant has been successful with his Application for a RRO, the Tribunal considers it just that the Respondent reimburses the Application and hearing fees totalling £300.00

Decision

71. The Tribunal orders the Respondent to pay the Applicant the sum of £5,700.00 by way of a rent repayment order and to reimburse the Applicant with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to rpsouthern@justice.gov.uk

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.