



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

- Case Reference** : CHI/43UC/HMF/2021/0025
- Property** : 36B The Avenue, Worcester Park, Surrey
KT4 7EY
- Applicants** : Ana Martins
Hayley Wells
Al Drennan and
Ivana Nagyova
- Representative** : Justice for Tenants
- Respondent** : Eugene Christopher Dowd
- Representative** : Mrs Anne Dowd
- Type of Application** : Application for a rent repayment order by
tenant - Sections 41(1) & 41(2) of the
Housing and Planning Act 2016
Sections 40, 41, 43 & 44 of the Housing
and Planning Act 2016
- Tribunal Member(s)** : Judge P J Barber
Mr K Ridgeway MRICS
Ms T Wong
- Date and venue of the
Hearing** : Havant Justice Centre, Elmleigh Road,
Havant PO9 2AL
23 November 2021
- Date of Decision** : 1 December 2021

DECISION

Summary of Decision

1. The Tribunal orders Mr Eugene Christopher Dowd to make rent repayments as follows:
 - (i) to Ms Martins the sum of £6014.91
 - (ii) to Mr Drennan & Ms Nagyova the sum of £4725.03
 - (iii) to Ms Wells the sum of £5189.91
2. The Tribunal further orders the Respondent to pay the sum of £300.00 to the Applicants by way of reimbursement of application and hearing fees within 28 days from the date of this decision.

Background

3. Hugo Da Silva, Ana Martins, Hayley Wells, Al Drennan and Ivana Nagyova applied on 1 September 2021, under section 41 of the Housing and Planning Act 2016 for rent repayment orders (RRO) respectively in sums of £9,000 (Hugo Da Silva & Ana Martins) £7,800 (Alistair Drennan & Ivana Nagyova) and £7,800 (Hayley Wells). Subsequently Mr Da Silva withdrew from the application.
4. 36B The Avenue, Worcester Park, Surrey KT4 7EY (“the Property”) was rented by the Applicants from Mr Dowd, by assured shorthold tenancy agreements as follows:-

Mr Drennan & Ms Nagyova

AST dated 1 October 2018; Rent £650pcm – Commencing 1 October 2018

Mr Da Silva & Ms Martins

AST dated 28 December 2018; Rent £750pcm – Commencing 1 January 2019

Ms Wells

AST dated 12 June 2019; Rent £650pcm – Commencing 7 July 2019

5. Due to Covid pandemic restrictions, no inspection of the Property was made. The Respondent described the building, of which the Property forms a part, as a 1910 brick built large detached house divided in about 1987 into four self-contained units, the largest being the flat at No. 36B. The Respondent described the Property as being made up of three large Bed/Sitting rooms. Mr Dowd occupies the fourth flat, being Flat 36D, himself.
6. The Applicants had stated that the Property met the conditions for a mandatory HMO licence under the Licensing of Houses in

Multiple Occupation Order 2018, and indicated during the hearing that the Order had commenced on 1 October 2018. The Respondent stated that he had made application to Epsom & Ewell Borough Council on 6 April 2021, for an HMO licence.

7. The Applicant tenants allege that the Respondent landlord committed an offence from the date when a fifth tenant occupied the Property, namely Ms Wells on 7 July 2019, until 12 April 2021. There was a dispute between the parties as to the actual date on which the application for a licence was made; the Applicants said the application was made on 12 April 2021, whilst the Respondent said it had been made on 6 April 2021, but possibly not processed by the Council until slightly later, due to the Easter holiday period.
8. Directions were issued on 19 October 2021; subsequently, various case management applications by the parties were made seeking additional time for compliance. In addition, the Respondent landlord made application to remove and disallow various documents which had been included in the bundle by the Applicants; the admissibility of such documents was addressed at the hearing as a preliminary issue.
9. The Tribunal heard the application on 23 November 2021, by a hybrid of video link and face to face. Ms Claire Sherratt of Justice for Tenants appeared for the Applicants, together with the four remaining Applicants, all by video link. Mr Dowd appeared in person, accompanied and represented by his former wife Mrs Dowd.

Preliminary Issue

10. The parties made submissions to the Tribunal in regard to the application made by the Respondent for exclusion of Pages 11; 32-47; 48-62; 63-80; 81-93; 94-115; 122 & 223-251. Mrs Dowd submitted that conviction of a criminal offence and potential liability to repay over £24,000 to the Applicant tenants, had severe implications for Mr Dowd; she said it was of paramount importance in the interests of fairness and justice, for the Civil Procedure and Criminal Rules of evidence to be followed. Mrs Dowd complained that the Applicants' reply had only been served with the bundle and went on to detail the various documents to which she objected.
11. Ms Sherratt submitted that the proceedings are governed not by Civil Evidence procedure or Criminal rules of evidence, but by the Tribunal procedure rules; she added that statements of truth had been signed by all the Applicants, and authority given to Justice for Tenants to represent them. Ms Sherratt submitted that many of the documents objected to, were attachments to the original application; she added that the other documents were all of relevance, including the fresh rent schedule in the name only of Ms

Martins, following Mr Da Silva having withdrawn from the application; also the General Release document.

12. Mrs Dowd said she wished to address the Tribunal further; she referred to documents being “slipped” into the bundle not having been formally exhibited previously, and said it was unfair for the evidence of Hayley Wells to be included, unless a statement was made by her in accordance with Criminal Procedure Rules. Mrs Dowd referred to Section 9 statements in the bundle and how she wished to cross-examine the Applicants, given the serious repercussions of this case for Mr Dowd, and she added that the Tribunal should not find him guilty without proper evidence.
13. Ms Sherratt submitted that the General Release is not binding on Ms Martins, given that Ms Martins was not a party to it and the document remained of relevance and should be kept. Ms Sherratt said that statements of truth had been made by all the Applicants and should accordingly remain. Ms Sherratt said that Section 9 statement formats were not a requirement, although the statements may still be accepted under the Tribunal Procedure rules. Ms Sherratt suggested that documents from the council were relevant and helpful to the Tribunal and should remain in the bundle, along with the Land Registry details which had also been objected to.
14. After a short adjournment, the Tribunal indicated that it had considered the objection carefully and concluded that many of the documents objected to, were part of the original application and that others were relevant to a fair and proper consideration of the application and not unfairly prejudicial to the Respondent, or outside of scope of matters to be properly considered.

Consideration of the substantive application

15. The Housing Act 2004 introduced Rent Repayment Orders (RROs) as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (“the 2016 Act”) Parliament extended the powers to make RROs to a wider range of “housing offences”. The broad rationale for the expansion was that Government wished to support good landlords who provide decent well-maintained homes.
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. Ms Sherratt presented her case including reference to the rent schedules in the bundle; she advised that the amount claimed is £9,000 for Ms Martins, but an adjusted sum of £7,388.46 for Mr Drennan and Ms Nagyova, having been reduced from £7,800, to off-set a period of 19 days @£21.66 per day; this represented a claim for the period 1 May 2020 to 12 April 2021, rather than 30 April 2021. In regard to Ms Wells, her claim was adjusted and increased from £7,800 as in the schedule, to £7,900 to reflect two

payments of rent in February & March at £700 as evidenced in the bank statement at Page 94.

18. Ms Sherratt said that the correspondence from Epsom & Ewell Borough Council in the bundle made it clear that they required the Property to be licensed and that the Property, she said, had not become licensed by the council until 12 April 2021. Ms Sherratt referred to paragraph 14 in the Respondent`s statement that “...in December 2020 I consulted Heron Estates Property Management for management advice on the flat. It was then that I first became aware of the requirement to register the flat as an HMO due to 5 persons now occupying the flat”; she added that during the whole period for which the respective rent repayments are claimed, the Property was not licensed and should have been. Mrs Dowd submitted that the HMO licence had been applied for on 6 April 2021, saying the electronic process could not have involved a request for payment unless and until Mr Dowd had made a complete application, which she said he had done on 6 April 2021. Mrs Dowd said the discrepancy over dates was due to the intervening Easter break. Ms Sherratt referred to the decision in *Williams v Parmar* at Page 306 of the bundle, and submitted that the application was not made until fully validated by the council on 12 April 2021.
19. Ms Sherratt called Ana Martins who confirmed that her statement in the bundle was true. Ms Martins said that she had left the Property on 30 September 2021 and had subsequently received a letter in her name from Octopus Energy suggesting that she was liable for bills. Under cross examination, Ms Martins accepted she could not be certain that it was Mr Dowd who had caused Octopus to send her the letter, and also accepted that she had not suffered any loss during the tenancy.
20. Ms Sherratt called Mr Drennan who confirmed that his statement in the bundle was true. Mr Drennan said that the action regarding the rent repayment claim had been agreed jointly by the Applicants and he stated that there were damp issues in the corner of the room and under the window, with no action for months by the landlord. Mr Drennan referred to an application made by Mr Dowd to the Tribunal to determine rent increases proposed, which he said had been struck out, owing to incorrect forms having been used. Mrs Dowd questioned whether Mr Drennan was a professional person, given that Mr Dowd required only professional tenants to occupy. Mrs Dowd also referred to photographs of the interior of Mr Drennan`s room, which Mr Drennan said merely contained his belongings. Mrs Dowd also raised the plan layout for the flat, suggesting Mr Drennan`s was the largest room, which Mr Drennan disputed. Mrs Dowd suggested that Mr Drennan had enjoyed a low rent being £650pcm since 2018, and that when the rent was finally increased from October 2021, Mr Drennan had allowed arrears of £500 to accumulate. Mr Drennan accepted that in an email at Page

168 of the bundle, he had indicated never having had a problem living at the Property. Mrs Dowd suggested this was inconsistent with any allegation of disrepair. Mrs Dowd referred to photographs in the bundle at Pages 210-217; Mr Drennan denied that the duvet covers shown in the pictures on the radiators, belonged to him or Ms Nagyova. Mrs Dowd suggested that Mr Drennan had orchestrated the rent repayment application, which he denied, saying it was a collective decision by the Applicants. Mr Drennan confirmed he had suffered no damage, loss or injury whilst living at the flat.

21. Ms Sherratt called Ivana Nagyova who confirmed her statement in the bundle was true. Ms Nagyova confirmed that she had suffered no injury damage or loss while living at the Property. Ms Nagyova said she had not lived in the flat 24/7 during Covid, as she had been a key supermarket worker and still went to work. Ms Nagyova insisted that she and Mr Drennan had taken joint decisions regarding any complaints made.
22. Ms Sherratt called Hayley Wells who confirmed her statement in the bundle as being true. Ms Wells said that on the whole she had had a good relationship with Mr Dowd as landlord; she said she had on occasion reported damp and mould in the corner of her room, which she said she had cleaned before the photos in the bundle were taken.
23. The Tribunal is satisfied that the Applicants met the requirements for making an application under section 41 of the Act. The Applicants alleged that Mr Dowd had committed the offence of control or management of an HMO which is required to be licensed under section 72(1) of the Housing Act 2004, for part of the period whilst the property was let to them. As regards the issue regarding the General Release document, this was signed only by Mr Da Silva, and given that Ms Martins was not a party to it, it is not binding on her. Ms Martins said that she had paid all the rent from her account, and the fact that a joint tenancy subsisted means that either she or Mr Da Silva (until only in the case of Mr Da Silva, he signed the General Release) were jointly and severally liable, and/or beneficially entitled under their tenancy agreement. An offence under section 72(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The Tribunal notes the discrepancy regarding the date on which the application was made for an HMO licence, although accepts the Respondent's evidence that the application was submitted and payment made on 6 April 2021; the local authority did not however, acknowledge until 12 April 2021. Accordingly, the alleged offences were committed as follows:

Ms Martins – 1 April 2020 to 31 March 2021

Mr Drennan & Ms Nagyova – 1 May 2020 to 6 April 2021

24. In regard to the landlord's financial circumstances, Mr Dowd said in evidence that he has a pension of £290.00 per month from the BMA and otherwise relies on the rental income from the three flats which are of differing sizes, and being 36A - £10,800.00 per annum (gross); 36B - £24,600.00 per annum (gross) & 36C - £12,600.00 (gross). Mr Dowd said that he has credit card debts of £5,500 owing to Tesco and £2,500 owing to HSBC Bank Plc, and also a 7 year loan from HSBC with repayments at £334.00pcm. Mr Dowd referred to child maintenance which he pays at £6,492.00 per annum, and spousal maintenance of £4,080.00 per annum; he said he has a 2013 Ford Focus car which is worth about £5,000. In regard to expenses, Mr Dowd complained as to the shortness of time which he said had been allowed, and referred to written lists which he now had with him, but had been unable to include with his statement. Mr Dowd referred to annual outgoings as follows:-

Roof repair	1,550.00
Mortgages	5251.56
Council Tax	1764.75
Electricity	1385.32
Gas	1025.50
Water	529.55
Insurance	354.90
Repairs & Renewals	8282.72
Personal Tax	1201.00

25. Mr Dowd said that the valuations of the four flats in 2018 for matrimonial settlement purposes and approximate mortgage debts had been:-

	Value	Mortgage
36A	275,000.00	- £210,000.00
36D	275,000.00	- £220,000.00
36C	325,000.00	- £255,000.00
36B	335,000.00	- £239,797.00

In regard to his annual living expenses, Mr Dowd said that these are as follows:-

Mortgage (36B)	4734.84
HSBC Loan	4016.40
AA	346.44
TV Licence	159.00
Mobile Phone	360.00
Wi-Fi Broadband	720.00
Child Support	6492.00
Spouse Support	4080.00
Children Swimming	1080.00
Children Sailing Club	804.00
Food	336.00
Car	3000,00
Holiday	2160.00
Total =	31,312.68

Mr Dowd said that his overall net income is £24,500.00 pa and that accordingly, this results in an annual deficit of £6908.50. Ms Sherratt submitted that gross income from the three flats was just over £52,000, not including any expenses; Mr Dowd agreed.

26. In her closing, Mrs Dowd said that Mr Dowd had only become a landlord in late 2018 as a result of a matrimonial court order and that it had taken a long time to sort out personal arrangements; Mrs Dowd said that Mr Dowd had not gone looking into the law as he should have done, but it was a difficult time with their three triplets being only 11/12 years old at that time, and damage limitation for the children being a priority. Mrs Dowd said Mr Dowd had done his best to take on the new obligations as landlord at the time, without help, and that he had not increased rents for three years, and had not come into it for “big bucks”, adding that as utility costs were included in the rent, Mr Dowd had in real terms been losing money as time and inflation went by. Mrs Dowd also said that during the Covid pandemic, people were generally at home more and, consuming more, so far as utilities were concerned; she said the tenants had produced little evidence of them having suffered any damage, injury or loss and that Mr Drennan had, in February 2021, said categorically in an email that he had never had a problem; then she said, two months later he had come up with “serious defects”. Mrs Dowd referred to the

inspection visit made by Bryony Smart of the council by which time, she said that the room, previously in a complete mess, had been tidied. Mrs Dowd said that Mr Dowd makes no living wage from letting the three flats due to his inexperience, and that having five tenants has done him a disservice; she added again that the tenants produced no evidence as to no repairs being carried out and that they had not wished to leave, given that the Property was well cared for and reasonably priced. Mrs Dowd referred to the General Release and submitted that the waiver of rights signed by Mr Da Silva also bound his co-tenant, Ms Martins, referring again to the Civil Procedure Rules and Criminal Procedure rules and belated “slipping-in” to the bundle of documents by the Applicants. Mrs Dowd said that the Tribunal rules were meant to be flexible, but should not favour the Applicants and referred to the need to consider estoppel in relation to the joint tenancy of Mr Da Silva and Ms Martins.

27. In her closing, Ms Sherratt said there was clear evidence of the Property being an unlicensed HMO in the tenancy agreements, witness statements, evidence at the hearing and correspondence from the council. Ms Sherratt said Mr Dowd accepted that five people had occupied the Property since July 2019, and that he had not applied for a licence until April 2021. As regards the actual date of application, Ms Sherratt said this was 12 April 2021. Ms Sherratt said the Tribunal had to be satisfied beyond a reasonable doubt that the offence was committed, but this did not mean beyond “any” doubt; she submitted that the starting point for the amount if the order is the maximum as claimed, and said that although Mr Dowd has no previous convictions, there was in any event nationally a very low rate of local authority prosecutions in such matters. As regards financial circumstances, Ms Sherratt referred to various decisions in the bundle and said there should be no presumption as to reduction, adding in relation to utilities, that fixed costs are also paid when a property is empty, although accepted there was a range of views. Ms Sherratt said that mortgage and repair costs should no longer be deducted, adding that Mr Dowd had not included with his statement, evidence of financial circumstances and that he would have known about the application before 19 October 2021 when the directions had been sent to him. Ms Sherratt said the purpose of the order was also to punish offenders and to have real economic impact, adding that the total rental income of over £52,000pa received by Mr Dowd, was substantial. Ms Sherratt said there was no evidence of Mr Dowd being a good landlord and that he had complied with minimum legal obligations, adding that the Applicants were entitled to make this application and that it was not an attempt at “revenge”. Ms Sherratt added that no evidence of the alleged arrears of rent owing by Mr Drennan and Ms Nagyova had been provided. Ms Sherratt said it was evidence of poor conduct by the landlord that he had failed to apply for the licence until April 2021 and that he should have kept abreast of requirements. Ms Sherratt submitted that complaints of leaks,

damp, mould and heating defects had not been dealt with in timely fashion and added that the maximum, or a high rate order, was justified. Ms Sherratt said the Applicants also seek reimbursement of the application and hearing fee of £300.00 under Rule 13.2 of the Tribunal Procedure rules.

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

Has Mr Dowd (the Landlord) committed a specified offence?

29. The Tribunal must first be satisfied beyond reasonable doubt that the landlord has committed one or more of the seven specified offences. The relevant offence in this case is under section 72(1) of the Housing Act 2004, “control or management of an HMO which is required to be licensed, but is not so licensed”.

30. The Tribunal notes from Mr Dowd’s own statement that he became aware of the requirement for an HMO licence, in December 2020, and that he subsequently applied and obtained such licence in April 2021. At paragraph 14 of his statement, Mr Dowd said “*I had previously been unaware of this legislative requirement. I then set about making enquiries for an HMO licence to Epsom & Ewell Council my local authority for this flat.*” The Tribunal is satisfied that from late 2018 onwards, Mr Dowd was the person having control of or managing the Property and that at the relevant times, it was not so licensed

31. The Tribunal finds that

- The Property was required to be licensed under the designation made by Epsom & Ewell Borough Council and being effective from 1 October 2018.
- The Property was not licensed from the date when the fifth occupier, Ms Wells commenced occupation, being 7 July 2019, until 6 April 2021. The Tribunal accepts that the application was “made” on 6 April 2021 even though the council may not have responded further until 12 April 2021 or shortly thereafter due to the Easter break.
- Mr Dowd was the owner of the property and received rent. The Tribunal is satisfied that Mr Dowd met the definition of a person managing the Property.
- The Tribunal is satisfied that Mr Dowd’s failure to ensure that the property was licensed during the relevant period was not deliberate and that initially he had no previous experience as a landlord, having unexpectedly had the four flats transferred to him as a result of a matrimonial court order in late 2018, although he might have made enquiries

as to his responsibilities rather sooner. In those circumstances the Tribunal holds that Mr Dowd did not have a reasonable excuse for his contravention of the licensing requirements.

32. Given the above findings the Tribunal is satisfied beyond reasonable doubt that Mr Dowd has committed the specified offence of control or management of an HMO required to be licensed, but not so licensed, from 7 July 2019 to 6 April 2021, contrary to section 72(1) of the Housing Act 2004.

What is the maximum amount that Mr Dowd can be ordered to pay under a rent repayment order (section 44(3) of the 2017 Act?)

33. The Applicant tenants paid Mr Dowd the rents, as referred to at paragraph 3 of this decision, under their respective tenancies of the Property.
34. The maximum amounts payable by Mr Dowd are the rents paid by the Applicants during the period of the commission of the offence as follows:-

Ms Martins
1 April 2020 to 31 March 2021 - £750.00pcm
Total = **£9,000.00**

Mr Drennan & Ms Nagyova
1 May 2020 to 6 April 2021 - £650.00pcm
Total = **£7,280.16** (being £7,800 less 24 days @ £21.66)

Ms Wells
7 April 2020 to 6 April 2021 - £650.00pcm
Total = **£7,900.00** (including two months @ £700.00pcm)

35. As far as the Tribunal is aware no universal credit was paid in respect of rent for the tenancy.

What is the Amount that Mr Dowd should pay as rent repayment order?

36. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of Mr Dowd in his capacity as landlord, whether at any time Mr Dowd has been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.
37. The Tribunal finds the following facts in relation Mr Dowd:

- a) Mr Dowd unexpectedly became a landlord upon transfer of the Property to him as part of a matrimonial settlement in late 2018. Mr Dowd said in evidence that at the time of his divorce, he was distracted by other matters including making provision for his three triplet children then age 11/12 years.
- b) Mr Dowd denied being a bad landlord and the tenants, in their evidence, generally indicated that they had suffered no loss injury or damage during their occupations.
- c) Mr Dowd should have made it his business to consider more carefully his responsibilities as a landlord sooner than he did, although it was not until July 2019 that the offence commenced, after a fifth occupier was introduced. Nevertheless, the Tribunal considers Mr Dowd was in the aftermath of a divorce at the relevant time also concerned for his three relatively young children, to whom he it was said, he was exercising access rights; the Tribunal considers that the failure to apply for a licence was misguided, but not intentional on the part of Mr Dowd.
- d) The Tribunal accepts that there was no deliberate intention by Mr Dowd to evade the law; however, ignorance of the law is not a reasonable excuse for failure to obtain a licence. Mr Dowd allowed two years to elapse from late 2018 to December 2020, after he had become the landlord before he consulted agents; even then, the purpose appears to have been in regard to ascertaining market rent levels and almost by chance he then became aware of the requirement for the Property to have an HMO licence. In addition, although Mr Dowd became aware of the requirement for an HMO licence in December 2020, he did not proceed to apply for a licence from the council until April 2021.
- e) The Tribunal finds the following facts in respect of the allegations:
 - The evidence as to the existence and severity of damp and mould was unclear; some of the mould was said to have been cleaned before the photographs in the bundle were taken.
 - Mr Dowd said that the problem with the boiler was in regard to valves being stuck and that these had been rectified.
 - Mr Dowd admitted that roof work had been undertaken to obviate a leak; however, it is unclear as to precisely how long the leak had been occurring and whether the time taken to effect a repair went in excess of the norm, particularly having regard to difficulties pertaining during Covid in regard to the organising and carrying out of works.
 - Epsom & Ewell Borough Council issued an HMO licence on 14 April 2021; Schedule 2 of that licence made no

- reference to any repair or similar works being outstanding or required.
- Mr Dowd had not obtained an increase in the rents for the Property for some time before the HMO licence was obtained.
- f) The Tribunal is satisfied that Mr Dowd attended to his obligations as a landlord in a reasonably responsible manner, and that the evidence did not support a conclusion that the property was in a significant state of disrepair.
- g) During the period that the property was unlicensed, Mr Dowd had no other income, apart from the rents for Flats 36A, 36B & 36C, and also a pension from his former employer the British Medical Association, in a sum of £290.00 per month. After outgoings, this appeared to result in a deficit according to the evidence given by Mr Dowd.
- h) The Tribunal accepts that the Applicants were entitled to make the application and that there is no clear evidence of vindictiveness or malice, although the tenants' position and vociferousness regarding alleged defects does appear to have increased between February and April 2021, based on such evidence as was provided.

Decision

38. The Tribunal finds the offence under Section 72(1) Housing Act 2004 to have been proved beyond a reasonable doubt; from the date on which the fifth occupier took up occupation being 7 July 2019 until the application for a licence was made on 6 April 2021, it is clear from the evidence that the Property was under the control of Mr Dowd, and was required to be licensed, but was not so licensed.
39. The amounts of rent paid by the tenants are respectively as shown in paragraph 25 of this decision, being in each case the rent paid for a period not exceeding 12 months, during which the landlord was committing the offence. No Universal Credit payments apparently arose.
40. In regard to the conduct of the parties, and on the basis of the evidence actually provided, the Tribunal finds that the Respondent was a reasonable, if somewhat naïve landlord; similarly, the Tribunal finds that the Applicants were not malicious or unreasonably behaved. However, the Tribunal takes into account the fact that Mr Dowd allowed two years to elapse before making enquiries of an agent, at which time he appeared to learn by chance of the requirement for an HMO licence; even then, Mr Dowd still allowed more than three further months to elapse before he

actually made application for a licence. Given that he had knowledge of the requirement, Mr Dowd should have acted more quickly to obtain the licence.

41. As regards the financial circumstances of the landlord, the Tribunal accepts that Mr Dowd has a deficit arising from his monthly income and expenditure, taking into account all his outgoings; in regard to capital, it was unclear from the evidence what the current value of the flats would be, although they appear in any event to be subject to significant mortgage loans.
42. The Tribunal considers that the utility outgoings being electricity - £1385.32; gas - £1025.50; and water - £529.55, should be deducted from the gross rents, but not other costs including mortgage, council tax, insurance, repairs and income tax. The total for the above utilities is £2940.37. In the absence of clearer evidence as to how these may be apportioned to the three tenancies, the sum of £2940.37 is deducted in equal amounts for the three tenancies, such that £980.12 is to be deducted first from each of the claimed amounts for rental as follows:-

Ms Martins
£9,000 less £980.12 = **£8019.88**

Mr Drennan & Ms Nagyova
£7280.16 less £980.12 = **£6300.04**

Ms Wells
£7900 less £980.12 = **£6919.88**

Furthermore, the determination of the Tribunal taking all the relevant circumstances into account, including the delay of two years by Mr Dowd in researching or checking his responsibilities as a landlord, and the further delay of more than three months in applying for a licence, after he eventually became aware of the requirement, is that Rent Repayment Orders should be made for sums being 75% of the above amounts as follows:-

Ms Martins
£8019.88 x 75% = **£6014.91**

Mr Drennan & Ms Nagyova
£6300.04 x 75% = **£4725.03**

Ms Wells
£6919.88 x 75% = **£5189.91**

The Tribunal further orders the Respondent to repay to the Applicants within 28 days, the application and hearing fee being the sum of £300.00.

Appeals

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, 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.