FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00AP/HMG/2021/0013 (Unit 10B)** **LON/00AP/HMF/2021/0177 (Unit 10D)**
HMCTS	**:**	**V: CVPCOURT**
Properties	**:**	**Units 10B & 10D, Omega Works, 167, Hermitage Road, Haringey, London, N4 1LZ**
Applicants	**:**	**Dillan Katz & Talia James (Unit 10B)** **Luke David, Georgina Mears, Maximilian Cramer & Alexandra Morel-Fonteray (Unit 10D)**
Representative	**:**	**Clara Sherratt (Justice for Tenants)**
Respondent	**:**	**Jacqueline Hancher**
Representative	**:**	**Karol Hart (Freemans Solicitors)**
Type of applications	**:**	**Applications for a rent repayment order by a tenant (Sections 40, 41, 43, 44 & 46 of the Housing and Planning Act 2016)**
Tribunal	**:**	**Judge Robert Latham** **Mark Taylor MRICS**
Date and Venue of Hearing	**:**	**21 and 22 February 2022 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**4 April 2022**

DECISION

Decision of the Tribunal (LON/00AP/HMG/2021/0013)

1. The Tribunal dismisses the applications brought by Dillan Katz and Talia James as they have not brought their application against their relevant landlord.

2. The Tribunal makes no order in respect of the Tribunal fees paid by the Applicants.

Decision of the Tribunal (LON/00AP/HMF/2021/0177)

3. The Tribunal makes the following Rent Repayment Orders against Jacqueline Hancher which are to be paid by 25 April 2022:

(i) Luke David: £7,892.36;

(ii) Georgina Mears: £6,464.58;

(iii) Maximilian Cramer: £8,124;

(iv) Alexandra Morel-Fonteray: £8,820.

4. The Tribunal determines that Jacqueline Hancher shall also pay the Applicants £200 by 25 April 2022 in respect of the reimbursement of the tribunal fees which they have paid.

Covid-19 pandemic: description of hearing

This has been a hybrid hearing. The form of the hearing was CVPREMOTE. This form of hearing has not been objected to by the parties. A face-to-face hearing was not held because it was not practical to do so because of the number of parties. Ms Jacqueline Hancher requested an oral hearing and attended in person with her Solicitor. The other parties joined the hearing remotely. Judge Latham was present at the hearing. Mr Taylor joined remotely.

The Tribunal has had regard to the following bundles of documents (totalling over 1,300 pages):

1. Applicants' Response and 10D Bundle (14.1.21) (508 pages): "A1";
2. Applicants' 10B Bundle (14.1.21) (235 pages): "A2"
3. Applicants' Response to Strike Out (11.10.21) (8 pages): "A3";
4. Applicants' Response to Respondents' Supplementary Evidence and Comments on UT Decision (4.3.22) (5 pages): "A4")
5. Respondent's Bundle (10.12.21) (261 pages): "R1";
6. Respondent's Reply (28.2.22) (112 pages): "R2";
7. Respondent's Strike Out (10.9.21) (149 pages): "R3";
8. Respondent's Strike Out Submissions (10.9.21) (8 pages): "R4".
9. Respondent's Additional Bundle (25.2.22) (21 pages): "R5")
10. Respondent's Response to Applicant's Submissions (4.3.22) (4 pages): "R6"

Index to Decision

1. Introduction

1. The Tribunal is required to determine two applications under section 41 of the Housing and Planning Act 2016 ("the 2016 Act) from the Applicant tenants for rent repayment orders ("RROs") against Ms Jacqueline Hancher ("the Respondent") in respect of rooms which they occupied as tenants at Units 10B and 10D Omega Works, 167 Hermitage Road, N4. The warehouse at 10 Omega Works forms part of a large number of Victorian warehouses on the Crusader Industrial Estate. There are now some 240 people living in 20 units on the Estate. The Respondent contends that the accommodation has been let as "warehousing living" in respect of which no HMO licence is required.

LON/00AP/HMG/2021/0013 ("0013")- Unit 10B

2. By an application received on 29 March 2021, Ms Dillan Katz and Ms Talia James contend that Unit 10B was an unlicenced HMO. Unit 10B is described as a "5 bedroom residential warehouse". They provided a bundle of documents extending to 237 pages.

   (i) Ms Katz occupied Room 5 between 16 February 2018 and March 2020 and paid a rent of £650 per month. She seeks a RRO in the sum of £7,800, namely 12 months at £650pm for the period 10 February 2019 to 9 February 2020.

   (ii) Ms James occupied Room 4 between 1 November 2018 and 31 March 2020. She seeks a RRO in the sum of £8,040 for the period 10 February 2019 to 9 February 2020.

3. On 10 June, Judge Hawkes gave Directions. The Respondent subsequently applied to strike out this application on the ground that the building at Unit B "was not and cannot be an HMO, as per Section 254(1) (a) to (e) of the Housing Act 2004" and that the building was not required to be licenced under the selective licensing rules, pursuant to Section 85 of the Housing Act 2004.

LON/00AP/HMG/2021/0177 ("0177") - Unit 10D

4. By an application received on 28 July 2021, Mr Luke David, Ms Georgina Mears, Mr Maximilian Cramer and Ms Alexandra Morel-Fonteray contend that Unit 10D was an unlicenced HMO. Unit 10D is described as a "1st floor 1-storey self-contained flat above a warehouse". Justice for Tenants assisted them to complete their application. The Applicants provided numerous attachments in support of their applications.

   (i) Mr David occupied Room 1 between 1 December 2017 and 20 December 2020. He seeks a RRO in the sum of £7,892.36 for the period December 2019 and 20 November 2020 (a period of 11.5 months).

   (ii) Ms Mears applies occupied Room 5 between 25 January 2020 and 20 December 2020. She seeks a RRO in the sum of £6,464.58 for the period 25 January 2020 and 20 December 2020.

   (iii) Mr Cramer occupied Room 3 between 14 May 2019 and 16 October 2020. He seeks a RRO in the sum of £8,775 for the period 14 July 2019 and 13 July 2020.

   (iv) Ms Morel-Fonteray occupied Room 4 between 1 May 2019 and 15 September 2020. She seeks a RRO in the sum of £8,820 for the period 1 August 2019 to 31 July 2020.

5. On 18 August, Ms Bowers gave Further Directions. She directed that both applications should be heard together and that there be a determination of a preliminary issue as issue "as to whether the building is required to be

licenced as an HMO". Each party was directed to file in a single bundle the material upon which they sought to rely in determination of this issue.

6. On 10 September, the Applicant issued a further application seeking to strike out both applications on the ground that Unit B and Unit D were not and cannot be HMOs as the properties were let for the purposes of "warehousing living". This is said to be a specific type of land use that had emerged in certain employment locations in the London Borough of Haringey ("Haringey") and which lends particular support to the creative industries sector.

7. The Respondent further applied to strike out the application made by Mr Cramer on the ground that it was made out of time. He seeks a RRO for the period for the period 14 July 2019 and 13 July 2020. The application was issued on 28 July 2021.

8. On 8 November, this Tribunal was convened to determine these preliminary issues. This was a hybrid hearing. Judge Latham and Respondents appeared in person; Mr Taylor and the Applicants appeared remotely. Ms Clara Sherratt represented the Applicants and Mr Karol Hart represented the Respondent.

9. The Tribunal was satisfied that it was clearly arguably that both Units B and D were HMOs which required licences. This was sufficient to deal with the Respondent's strike out application. However, the evidence adduced was inadequate to enable the Tribunal to determine whether either Unit B or D were buildings that required HMO licences. In response to the Respondent's application to strike out Mr Cramer's application on the ground that it was made out of time, Ms Sherratt contended that Mr Cramer had remained in occupation as a tenant until 16 October 2020. This was a matter of evidence that could not be resolved at the preliminary hearing.

10. The Tribunal therefore gave further Directions as a result of which all parties have filed the extensive material on which they seek to rely. The Respondent has also filed two videos which provided a guided tour of both Unit 10B and 10D.

2. The Hearing

11. Ms Sherratt, from Justice for Tenants, appeared for the Applicants. Justice for Tenants is a Community Interest Company which seeks to ensure that tenants have access to justice. Ms Sherratt adduced evidence from the six applicants. All joined the hearing remotely. She provided a Skeleton Argument.

12. Justice for Tenants had alerted the tribunal that Ms James had developed a serious medical condition and requested that special measures be taken. She gave evidence from her bed and without use of the camera.

13. Mr Hart, a Solicitor, appeared for the Respondent. He adduced evidence from the Respondent and from four witnesses. Mr Hart and Ms Hancher attended the hearing in person. The other witnesses gave their evidence remotely. Mr Hart did not provide a Skeleton Argument. However, he relied on three sets

of written representations dated 10 September 2021 (prepared for the strike out application), 10 December 2021 and 28 January 2022.

14. The parties produced an agreed bundle of authorities. Tribunal had invited the parties to agree a List of Essential Reading and a Timetable. This did not occur. The majority of the hearing was afforded to Mr Hart who cross examined all the Applicants at considerable length, including Ms James whom he questioned for over 1.5 hours. Ms Sherratt agreed to limit her closing submissions so that the hearing could be completed within the allocated time.

15. At the end of the hearing, we acceded to Mr Hart's request to adduce an additional bundle of documents relating to the communications between the Respondent and her architect, Mr Constantine Koritsas (see Bundle R5). This material should have been adduced at an earlier stage. We permitted the Applicants to respond to this (see Bundle A4).

16. On 25 February 2022, the Upper Tribunal handed down its decision in *Global 100 Limited v Jimenez* [2022] UKUT 50 (LC). On 1 March, we invited submissions from the parties on this decision which were provided in Bundles A4 and R6. We have had regard to all the written submissions which the parties have provided.

3. The Issues in Dispute

17. There are six issues which the Tribunal is required to determine:

(i) Should Mr Cramer's application be struck out as being out of time?

(ii) Is the Respondent the relevant landlord against whom Ms James and Ms Katz are entitled to seek a RRO? The Respondent contends that their landlord was initially Mr Amadis Ferreira who was later replaced by Mr Markie Burnard.

(iii) Are Units B and D "HMOs" falling within the "standard test" defined by section 254(2) of the Housing Act 2004 ("the 2004 Act")?

(iv) Did Units B and D require an HMO licence?

(v) Has the Respondent established a defence of "reasonable excuse" as defined by section 72(5) of the 2004 Act?

(vi) The assessment of any RRO.

4. The Witnesses

18. Ms Sherratt adduced evidence from the six tenants. They had all made witness statements: (i) Ms James (witness statement, dated 10 January 2022 at A1.172-174 and 5 July 2021 at A2.92-93); (ii) Ms Dillan Katz (witness statement, unsigned and undated, at A1.168-171; and 6 July 2021 at A2.94-97); (iii) Ms Mears (witness statement, dated 13 January 2022 at A1.436-467); (iv) Mr Cramer (witness statement dated 10 January 2022 at A1.468-470); (v)

Mr David (witness statement dated, 13 January 2022, at A1.471-501); and (vi) Ms Morel-Fonteray (witness statement dated 1 January 2022 at A1.502-508).

19. The Tribunal found all the Applicants to be honest and reliable witnesses. Ms James has developed a serious medical condition and gave evidence from her bed without a video camera. Mr Cramer was somewhat argumentative and appeared reluctant to answer directly the questions put to him. An important issue was whether he had vacated the property more than 12 months before he had issued his application on 28 July 2021. He admitted that he had temporarily vacated the property between 10 and 14 August 2020. When required to produce documentary evidence to support his account, he was able to do so.

20. Since 28 January 2003, Ms Hancher has owned the freehold of Unit 10 Omega Works. She lives is Shoreditch in a property that she owns. She owns three further properties, one of which is let out as an HMO in Islington. She accepted that all the Applicants have been granted ASTs. She had downloaded these from the internet and suggested that these agreements did not reflect the substance and reality of the situation. Since July 2020, the property has been marketed by Strettons with an asking price of £2.1m. She stated that a group of artists are trying to buy it.

21. Ms Hancher's recollection of detail was not good. It was not entirely clear whether this was poor recollection or more calculated. We understand that she has not been in good health, but we were not provided details of this. She stated that she was unaware of when Mr Cramer had temporarily vacated Room 3 (between 10 and 14 August 2020) or when he had finally vacated the room (16 October). However, text messages between Ms Hancher and Mr Cramer confirmed that she was aware of all these dates.

22. The Respondent called four further witnesses: (i) Annie Sherburne, a producer; (ii) Natasha England, a cleaner; (iii) Johnny Binnie, a musician, and (iv) Adrianne Jones, a consultant property manager who has worked for Mrs Hancher. Their evidence largely related to Unit B and the activities of Mr Ferreira and Mr Markie Burnard. Their evidence had little relevance to the issues which we are required to determine in respect of Unit D. Both the legal relationships and the lifestyles at Unit B were much more chaotic. In view of the decision that we have reached on Issue 2, it is not necessary for us to consider the allegations and counter allegations of how the occupants of Unit B conducted themselves. This is no reflection on Ms Katz and Ms James who were brought into this unstructured and Bohemian environment.

5. The Background

23. On 28 January 2003, Ms Hancher and Mr Sandeep Malhorta acquired the freehold of 10 Omega Works, one of 20 warehouses on the Crusader Industrial Estate in Haringey. She gave evidence that in 2009 she bought out her partner for £650k. However, the Land Registry Official Copy of Register of Title (at A1.392) registered her title on 27 January 2011, and recorded that she had purchased this interest for £360k on 16 December 2020. Ms Hancher could not explain this discrepancy.

24. Over time, 10 Omega Works has been divided into four units. Ms Hancher has run her fashion studio from Unit 10A. She is a fashion designer and has organised a number of events at the warehouse. Units B and D have each been divided to create five residential units. Unit 10C has been converted to create four residential units. Ms Hancher's case is that Units B, C and D have been use for warehouse living to encourage the creative arts. These Units have not only been used for living accommodation but also for workplaces where the occupants can develop their professional artistic activities and use the communal facilities for artistic events, such as concerts. In an email (at A1.491), Mrs Hancher describes how she has "spent 20 years trying to protect Omega Works from the developers and to be able to use my resources to put on arts events".

Unit 10D

25. In 2003, Unit 10D was leased to Hartley Designs. Between 2004 and 2007, Unit 10D was occupied by Lottie Ltd, a children's' film costume hire company. On 1 April 2008, a lease was granted to Mr Daniel Hernandez who ran two companies: (i) Umbrella Arts and (ii) Haringey Arts. Ms Hancher states that he had a commercial lease. At some stage, Mr Hernandez converted Unit 10D to create five residential units. A sketch plan (at A1.437) shows the layout of Unit D when the premises were let to the Applicants. There were five bedrooms, a kitchen, a bathroom and a living space.

26. Mr Luke David: Mr David was the first of the applicants to move into occupation of Unit 10D. Mr David worked as a Senior Accounts Manager in advertising with Hogarth Worldwide which was based in Central London. He did not run any business from the property. Ms Hancher granted him an AST. He occupied Room 1 between 1 December 2017 and 20 December 2020. On 15 January 2020, he was joined by his girlfriend, Ms Mears who was granted a separate tenancy of Room 5. They left at the same time. He had heard about the property through SpareRoom. David Whitfield, the tenant of Room 4, had posted an advert on behalf of Ms Hancher. There were five rooms when he moved into occupation. The other tenants were Mr Whitfield, Mr Yijun Huang (an architect), Mr Alistair Pritchard and a couple who kept to themselves. Mr Whitfield worked as a designer for Doc Martin. Mr Huang worked at the property. Mr Pritchard was a sound engineer and often went on tours. He was not a professional musician, but did possess a guitar.

27. His third, and final, Assured Shorthold Tenancy Agreement ("AST"), dated 14 December 2020, is at A1.280. The three agreements were in a similar form. The term was a period of 12 months at a rent of £780 pm. A deposit of £1,017.69 was required which was placed in a Deposit Protection Scheme. This is a standard form of tenancy agreement for an AST and lists the grounds upon which possession may be sought under the Housing Act 1988. Page 7 of the tenancy agreement is not included, but this would have included the standard term "not to use the property as anything other than a home". Mr David became unemployed during later part of his occupation and did make a claim for universal credit but has provided evidence that no benefits relating to his accommodation were provided during the relevant period of claim.

28. Ms Alexandra Morel-Fonteray: Ms Morel-Fonteray occupied Room 4 between 1 May 2019 and 15 September 2020. She worked as a media technology manager for Essence Digital who were based in Oxford Circus. She heard that there was a vacant room from a friend who was living in Unit 10C.

29. Her AST tenancy agreement (at A1.301) grants a tenancy for a term of 12 months from 1 May 2019 at a rent of £735 pm. She was required to pay a deposit of £848 which was placed in a Deposit Protection Scheme. The form of the agreement was similar to that granted to Mr David. By Clause 6.3.28, she covenanted "not to use the property as anything other than a home".

30. Mr Maximilian Cramer: Mr Cramer occupied Room 3 between 14 May 2019 and 16 October 2020. He moved out for a period of four days between 10 and 14 August 2020 to take up a tenancy of alternative accommodation. This accommodation was not suitable and Ms Hancher allowed him to return. Mr Cramer found out that the room was being advertised from Mr Pritchard who was a friend. Mr Cramer was described as a developer, but seems to have been unemployed. However, he was not in receipt of universal credit and seems to have been a man of means.

31. His AST tenancy (at A1.290) grants a term of 12 months from 14 May 2020 at a rent of £730 pm. He was required to pay a deposit of £1,010.77 which was paid in a Deposit Protection Scheme. By Clause 6.3.21, he covenanted "not to use the property as anything other than a home".

32. In response to questions from Mr Hart, Mr Cramer stated that he had previously been living in a warehouse living unit in Overbury Road. He believed that this had an HMO licence. Ms Hancher stated that she had had an excellent relationship with Mr Cramer and that she had cared for him. Mr Cramer did not accept that the relationship had been this close.

33. Mr Cramer had assisted Ms Hancher in drafting adverts for vacant rooms and in finding replacement tenants (see R2.70-77). He was referred to the SpareRoom advert at R1.153 headed "warehouse room available". The advert went on to describe a "creative living space with friendly warehouse available! Enjoy an open plan kitchen/living room with friendly house mates and neighbours we socialise with regularly". It also stated "We smoke inside so if your (sic) not keen on the smell maybe not for you". Ms Hancher complained that the tenants smoked in the premises. However, it seems that she was aware of this advert and raised no objection.

34. Ms Georgina Mears: Ms Mears occupied Room 5 between 25 January and 20 December 2020. Ms Mears was a senior accounts manager in advertising for Publicis and also for one of the divisions of Saatchi and Saatchi Her work was based in Central London. She heard about the accommodation from her boyfriend, Mr David. Ms Hancher stated that whilst couples were not allowed to share a room, they could rent two separate rooms. In response to Mr Hart, she stated that she was unaware that the accommodation had been designated as warehouse living.

35. Her tenancy agreement (at A1.313) grants a term of 12 months from 25 January 2020 at a rent of £690 pm. She was required to pay a deposit of £690 which was placed in a Deposit Protection Scheme. By Clause 6.3.21, she covenants "not to use the property as anything other than a home".

Unit 10B

36. Unit B has a more complex and colourful history. In 2009, Ms Hancher leased Unit 10B to Mr Hernandez. She described how Mr Hernandez had obtained a grant of £20k from Haringey to remodel Unit 10B for warehouse living. Unit B was converted to create five bedrooms, a kitchen, a dining area, a living area, a bathroom and a second toilet. There was also an outside shed. There is a plan at A1.26, At some stage, Mr Hernandez went to India, whereupon Mr Amadis Ferreira squatted Unit 10B. Mr Ferreira is a musician. He worked for Mr Hernandez. He had a band called Amadis and the Ambassadors. Ms Hancher made costumes for him and his backing band. She also helped to promote his events. Ms Hancher states that Mr Ferreira held a number of events at Unit 10B. This was confirmed by her witnesses.

37. After some six months, Ms Hancher regularised the position by granting Mr Ferreira a series of tenancies. He was initially granted a business tenancy. However, he was reluctant to pay business rates and requested an AST. Ms Hancher stated that this allowed her to protect his deposit in a Rent Deposit Scheme. Ms Hancher downloaded an AST agreement from the internet.

38. Ms Hancher has produced an AST agreement dated 9 June 2017 (at R1.33-41). This was not the first AST which she had granted to Mr Ferreira. Mr Ferreira paid a deposit of £1,923. The initial term of the tenancy was 12 months from 9 June 2017. The rent was £2,516 per month. Page 6 of the tenancy agreement has not been provided. The agreement seems to use the standard template, in which case it but this would have included the standard term "not to use the property as anything other than a home".

39. Ms Dillan Katz: Ms Katz occupied Room 5 between 16 February 2018 and March 2020. Mr Ferreira granted her an AST. She was a sales and events manager initially for Camden Town Clubs Ltd and later for London Union PLC. She saw the room advertised on Facebook by Mr Ferreira. Her case is that Mr Ferreira acted as agent for the Respondent. Mr Ferreira occupied Room 1. There were tenants in the three other rooms. There was also a shed in the garden. It was suggested that this was rented to Mr Joseph Wilkins. However, this is not relevant to the issues which we are required to determine.

40. Ms Katz's tenancy agreement is at A2.25. The copy of the tenancy agreement and her bank statements were largely illegible and better copies were provided at the hearing. The document is an AST in a similar form to that granted to the other tenants. The critical difference is that the landlord is specified as Mr Ferreira. He granted a term of 12 months from 1 March 2018 at a rent of £650 pm. She was required to pay a deposit of £650 which was placed in a Rent Deposit Scheme. By Clause 6.3.28, she covenants "not to use the property as anything other than a home".

41. Ms Talia James: Ms James occupied Room 4 between 1 November 2018 and 31 March 2020. Mr Ferreira granted her an AST. She is a print designer who worked for Ted Baker in Camden Town. Her case is that Mr Ferreira was "the lead tenant" who collected rent from the five tenants on behalf of the Respondent. Again, we discuss this as Issue 2.

42. Her tenancy agreement is at A2.35. The document is an AST in a similar form to that granted to Ms Katz. Mr Ferreira granted her a term of 12 months from 1 November at a rent of £670 pm. She was required to pay a deposit of £670 which was placed in a Rent Deposit Scheme. By Clause 6.3.28, she covenants "not to use the property as anything other than a home".

43. The Tribunal must determine whether the relevant landlord for Ms Katz and Ms James was Mr Ferreira or Ms Hancher. We discuss this as Issue 2.

6. The Law: Licencing of Houses in Multiple Occupation

44. Part 2 of the Housing Act 2004 ("the 2014 Act") relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if (emphasis added):

> "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

45. Section 260 provides that there is a presumption that the sole use condition is met:

> (1) Where a question arises in any proceedings as to whether either of the following is met in respect of a building or part of a building–
>
> (a) the sole use condition, or

(b) the significant use condition, it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown.

(2) In this section–

(a) "the sole use condition" means the condition contained in–

(i) section 254(2)(d) (as it applies for the purposes of the standard test or the self-contained flat test), or .....

46. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act. This came into force on 1 October 2018 and would cover the period during which these Applicants are seeking RROs.

47. On 27 May 2019, Haringey introduced an Additional Licencing Scheme (at A1.399) which extends to all HMOs in the borough. However, the parties agreed that both Units B and D would both fall within the mandatory scheme, if found to be HMOs.

48. Section 72 specifies a number of offences in relation to the licencing of HMOs. It is to be noted that the section does not use the word "landlord". The material parts provide (emphasis added):

"(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

.....

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1) (a temporary exemption notice), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1).

49. Section 263 defines the concepts of a person having "control" and/or "managing" premises:

> "(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
>
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
>
> (3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–
>
> > (a) receives (whether directly or through an agent or trustee) rents or other payments from–
> >
> > > (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
> > >
> > > (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
>
> (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

7. The Law: Rent Repayment Orders ("RROs")

50. Section 40 of the Housing and Planning Act ("the 2016 Act") provides

> "(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
> >
> > (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

51. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". These include offences under section 72(1) and 95(1) of the 2004 Act of control or management of (i) an unlicenced HMO; and/or (ii) an unlicenced house.

52. Section 41 deals with applications for RROs. The material parts provide:

> "(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."

53. Section 43 provides for the making of RROs (emphasis added):

> "(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)."

54. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(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.

55. Section 44(4) provides (emphasis added):

> "(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."

8. Issue 1: Is Mr Cramer's Application Out of Time?

56. Mr Cramer seeks a RRO for the period for the period 14 July 2019 and 13 July 2020. The application was issued on 28 July 2021. Mr Hart argues that the application was issued out of time as section 41(2)(b) of the 2016 Act provides that a tenant may apply for a RRO only if the offence was committed in the period of 12 months ending with the day on which the application is made (see [52] above).

57. Ms Sherratt responds that the application was issued in time as the offence was committed up to 10 August 2020 when Mr Cramer left Unit B and his deposit was returned. He had found alternative accommodation. However, this did not work out, and Ms Hancher allowed him to return to his room on 14 August. He finally left on 16 October 2020.

58. The critical issue is whether Mr Cramer was still occupying his room as a tenant on 29 July 2020. There is overwhelming evidence that he was and that Ms Hancher was aware of this. She returned the deposit which Mr Cramer had paid. Mr Cramer produced an invoice, dated 10 August 2020, from "Aussie" in the sum of £241.80. They assisted him to move on 10 August. There is a further invoice dated 14 August 2020, when they assisted him to return. Mr Cramer also provided a print-out from his electronic diary.

59. Text messages on 11 August 2020 between Ms Hancher ("H") to Mr Cramer ("C") confirm that Ms Hancher was aware of the situation: (i) H to C: "Hi Max how are you doing?"; (ii) C to H: "Not great how about you?"; (iii) H to C: "Dying in the heat. What has happened to you xx"; (iv) C to H: "Already looking for a new place. haven't even been there 24 hr"; (v) H to C: "Oh no do you want to move back in?"; (vi) C to H: "But wouldn't I have to be out soon?"; (vii) H to C: "I reckon that it's going to take at least 3 months if that helps"; (viii) C to H: "Well that is a very kind offer. I will let you know for sure".

60. In the light of this evidence, the Tribunal is satisfied that Mr Cramer brought his application in time.

9. Issue 2: Is the Respondent the Relevant Landlord for Unit B?

61. A tenant may only seek a RRO against their immediate landlord. This has been established by the Court of Appeal in *Jepson v Rakusen* [2021] EWCA Civ 1150; [2022] 1 WLR 324. The Tribunal is satisfied that Mr Ferreira and Mr Burnard were, during their tenure, the immediate landlord of both Ms Katz and Ms James. It is therefore not open to them to seek RROs against Ms Hancher.

62. Ms Katz's tenancy agreement, dated 1 March 2018, in respect of Room 5 is at A2.25-34. Mr Ferreira is specified as the landlord. Ms Katz paid her rent of £650 pm to Mr Ferreira. She paid a deposit of £650 to Mr Ferreira. The room had been advertised on Facebook by Mr Ferreira.

63. Mr Ferreira arranged for the electrics to be checked (see certificate dated 9 January 2018 at R2.9). This would be the responsibility of the landlord.

64. Ms Katz seeks a RRO for the period 10 February 2019 and 9 February 2020 and has provided proof of rent payments over this period (at A2.45-56). She made the following payments: (i) one payment to Mr Ferreira of £650 on 28 January 2019; (ii) one payment to Mr Hancher of £593 on 28 February 2019; (iii) three payments to Mr Ferreira of £650 on 30 March, 29 April and 30 May 2019; and (iv) nine payments of £650 to Mr Burnard of £650 on 29 June, 29 July, 30 August, 29 September, 28 October, 29 November and 27 December 2019 and 30 January and 28 February 2020.

65. Ms James' tenancy agreement, dated 1 November 2018, in respect of Room 4 is at A2.35-44. Mr Ferreira is specified as the landlord. Ms James paid her rent of £670 pm to Mr Ferreira. She paid a deposit of £670 to Mr Ferreira. The room was advertised on SpareRoom (see A2.100). Ms James texted Mr Ferreira about the letting (see A2.109).

66. When Ms James moved into occupation of her room, the four other rooms were occupied by Mr Ferreira, Ms Katz, Mr Jackson Baird and Sean. Ms James states that for part of the time, Mr Wilkins slept in the garden shed. He was able to use the facilities in Unit 10B.

67. Ms James seeks a RRO for the period 10 February 2019 and 9 February 2020 and has provided proof of rent payment over this period (at A2.57-61). She made the following payments: (i) four payments to Mr Ferreira of £670 on 1 November, 3 December 2018 and 28 January 2019; (ii) one payment to Mr Hancher of £593 on 28 February 2019; (iii) three further payments to Mr Ferreira of £670 on 1 April, 30 April and 30 May 2019; and (iv) nine payments to Mr Burnard of £670 on 28 June, 29 July, 30 August, 27 September, 29 October, 29 November and 30 December 2019 and 30 January and 2 March 2020.

68. Ms Sherratt argues that this was a flat share and that Mr Ferreira and, subsequently. Mr Marki Burnard were no more than a lead tenants. The Tribunal does not accept this. Ms Hancher granted both Mr Ferreira and Mr Burnard ASTs of Unit B. Initially, Mr Ferreira, and later Mr Burnard, had interests in land out of which they could grant subtenancies to Ms Katz and Ms James.

69. Had this been a flat share, this would have been a joint tenancy and all the tenants would have been jointly and severally liable for any arrears that had accrued. Neither Ms Katz nor Ms James accepted any liability for the arrears of the other tenants.

70. The Tribunal accepts that Ms Hancher had some contact with Ms Katz and Ms James. She wanted their email addresses (see A2.99). Ms Hancher stated that she required this for her insurers as she was insuring the whole of Unit 10. She added that it was a condition of the insurance that all the occupants should be employed. Such contact is consistent with Ms Hancher being their superior landlord.

71. In December 2018, Mr Ferreira went to India. He gave Mr Wilkins permission to use his room whilst he was away (see R2.14). On 16 January 2019 (at A2.121), Ms Hancher sent an email purporting to determine Mr Ferreira's tenancy on 28 February 2019. The "subtenants" were also required to vacate. This Notice was not valid. Her primary reason for serving the Notice was her concern about the condition of the property. She stated that extensive internal works were required to bring it up to a condition required for an HMO and Health & Safety and Fire legislation. The email was copied to the subtenants, namely Ms Katz, Ms James, Mr Burnard, Mr Baird and Mr Wilkins.

72. Mr Ferreira stopped paying his rent to Ms Hancher. On 29 January 2019 (at A2.137), Ms Hancher asked the subtenants how they were going to pay their rent to Mr Ferreira. She would rather that they paid it directly to her, as Mr Ferreira was not paying her. In February, both Ms Katz and Ms James paid their rent to Ms Hancher. Ms Hancher suggested that Ms Katz might like to take over the tenancy from Mr Ferreira (see emails at R1.88-95). Ms Katz was not willing to do so. In March, April and May, the subtenants continued to pay their rent to Mr Ferreira. Ms Hancher then persuaded Mr Burnard to take over the tenancy. She states that she accepted a surrender of Mr Ferreira's tenancy on 30 June 2019. Mr Ferreira owed rent of £12k. On 1 July 2019, Ms Hancher granted Mr Burnard an AST of Unit 10B at a rent of £2,700 for the first six months and thereafter £1,800 pm (at R1.42-61). From June 2019, Ms Katz and Ms James paid their rent to Mr Burnard. Ms Hancher states that Mr Burnard did not pay his rent to her and that there are arrears of £5,674.

73. The Tribunal has considered whether the events in 2019, changed the legal relationship between Ms Katz and Ms James and Ms Hancher. The Tribunal is satisfied that it did not. They were initially sub-tenants of Mr Ferreira. In July 2019, they became subtenants of Mr Burnard. Whilst in January 2019, they paid one months rent to Mrs Hancher, this was the rent that was lawfully due to Mr Ferreira. Mrs Hancher, as superior landlord, asked them to pay the rent directly to them, as Mr Ferreira was not paying his rent. The email of 16 January makes it clear that Ms Hancher was treating them as subtenants of Mr Ferreira.

74. The Tribunal is satisfied that Ms Hancher took an informed decision to treat Unit 10B differently from Unit 10D. She only wanted to deal with one tenant for Unit B; she was willing to grant direct tenancies in respect of each of the rooms at Unit 10D. The consequence of this finding, is that Ms Katz and Ms James are not entitled to seek a RRO against Ms Hancher. They would rather need to claim it against their immediate landlord, Mr Ferreira and later Mr Burnard.

10. Issue 3: Does Unit D meet the "standard test" for an HMO??

75. Section 254(2) of the 2004 Act specifies the six conditions which must be met if a building meets the "standard" test for being an HMO (see [44] above). Mr Hart argues that one condition is not met, namely:

> "(d) their occupation of the living accommodation constitutes the only use of that accommodation"

Section 260 (1) provides that there is a statutory presumption that the sole use condition is met, unless the contrary is established.

76. Ms Hancher's case is that Units B and D have been use for "warehouse living" to encourage the creative arts. These Units have not only been used for living accommodation but also for workplaces where the occupants can develop their professional artistic activities and use the communal facilities for artistic events, such as concerts. In view of our finding on Issue 2, the Tribunal focuses on the use made of Unit D.

77. On 2 February 2022, the Upper Tribunal gave judgment in *Global 100 Ltd v Jimenez* [2022] UKUT 50 (LC). The issue was whether a redundant office building occupied by "property guardians" was an HMO. Global 100 argued that the guardian's occupation of the living accommodation did not constitute the only use of that accommodation. Martin Rodger QC, the Deputy Chamber President, rejected this argument. The services performed by the guardians in ensuring that the property was not vandalised or squatted were the consequence of their use of the building as living accommodation.

78. The Judge observed (at [50]) that statutory purpose underlying the sole use condition is not immediately obvious. The presumption of sole use in section 260 and the power of a local housing authority effectively to disapply the sole use condition by making an HMO declaration under section 255, suggest that a desire to limit the practical significance of the condition. He was not referred to any material which explained the policy underlying the condition.

79. The Judge noted (at [6]) that Parliament has long recognised the risks to housing standards created by the conversion of property for multiple occupation and the sharing of essential living accommodation by separate, often vulnerable, households and has legislated to address those risks. In *Rogers v Islington LBC* [1999] 32 HLR 138, Nourse LJ referred to research illustrating the poor quality of many HMOS: in 1993 four out of ten HMOs were found by the English House Condition Survey to be unfit for human habitation; other studies showed that residents of HMOs were at a far greater risk of death or injury from fire than residents of other dwellings. Nourse LJ continued (at p.140):

> "HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and unsatisfactory kitchen, washing and lavatory facilities. It is of the greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control."

80. The Judge stated (at [15]):

> "These observations are equally applicable to the regulations of HMOs under the 2004 Act. Effective regulation and action by local housing authorities to reduce risks to the health and wellbeing of residents of

repurposed or converted living accommodation is as important an objective as it has ever been. The limits of effective regulation are set by the definition of "house in multiple occupation" in section 254 and it is important that this definition is not interpreted so narrowly as to frustrate the achievement of the statutory purpose."

81. The Crusader Industrial Estate is an area designated for warehouse living by the London Borough of Haringey ("Haringey"). In their planning document "Development Management DPD" (adopted July 2017, Haringey define "warehouse living" (at R3.74) as:

> "a specific type of land use that has emerged over time in certain employment locations within Haringey, and lends particular support to the creative industries sector. It does not fall within a specific use class – and is not live/work development – and as such is considered a Sui Generis use."

82. The document goes on to state that Haringey will support proposals for warehouse living that form part of an agreed masterplan to increase and diversify the employment offer whilst providing an appropriate standard of living for the integrated residential element. The masterplan should address a number of matters including the access arrangements, physical condition and layout of the existing building and accommodation on site. There is no evidence that any such masterplan has been produced for Unit 10.

83. On 20 September 2020 (at A1.35), Mrs Glayne Russell, Team Leader at Haringey's Private Sector Housing Team, gave the following advice to Ms James:

> "The (HMO) licence would not be required if the unit was genuinely used for the tenants' work place as well as primary residence. In our experience, this is rarely the case. However, we have not inspected, so cannot comment on the way this property was let".

84. On 20 July 2021 (at R3.114), Mr Bryce Tudball, Haringey's Interim Head of Planning Policy, Transport & Infrastructure, gave the following advice to Mr Koritsas:

> "The Council does not apply any specific standards to warehouse living proposals. Policy DM39 in the Development Management DPD requires that warehouse living proposals are subject to a masterplan and places the onus on the applicant to demonstrate that what is being proposed is acceptable. Warehouse living comprises purpose built and genuine integrated, communal working and living accommodation specifically targeted at the creative industries sectors and as such the HMO standards would not be appropriate."

85. Neither party has adduced any evidence from Haringey. It is the role of the local housing authority, rather than the planning department, to regulate HMOs. The manner in which Haringey envisage that "warehouse living"

differs from other forms of live/work developments, is not apparent. The Tribunal must rather have regard to the factual situation at Unit 10D.

86. The Tribunal is satisfied that Mr Hart's argument is hopeless. We must ascertain the nature of the contractual relationship between Ms Hancher and her tenants at Unit D. To adopt the words of Lord Ackner in *A.G.Securities v Vaughan* [1990] 1 AC 417 (at 446B), we must ask ourselves "what was the substance and reality of the transaction entered into by the parties?".

87. The starting point is the tenancy agreements which Ms Hancher issued to each of the four Applicants. Each tenant was granted a tenancy of a specific room. These were Assured Shorthold Tenancies ("ASTs") governed by the Housing Act 1988. Each tenant covenanted "not to use the property as anything other than a home".

88. ASTs are residential tenancies. Business tenancies cannot be assured tenancies (Schedule 1, paragraph 2 of the Housing Act 1988). Where premises are occupied for both business and residential purposes, they fall within the statutory code for businesses (see section 23 of the Landlord and Tenant Act 1954). There is an exemption for "a home business tenancy", a special category where a dwelling-house is let as a separate dwelling (see section 43ZA of the 1954 Act). This requirement that a home business tenancy is let as a separate dwelling, would exclude any HMO.

89. The tenancy agreements reflected the substance and reality of the situation. Ms Hancher required each tenant to complete a "Omega Works Tenants Information Front Sheet" (see A1.267). The tenants were required to provide details of their employer. Ms Hancher stated that this information was required by her insurer. None of the Applicants carried on any business at Unit 10D.

90. Mrs Hancher suggested that the tenancies did not reflect the substance and reality of the relationship. She had downloaded the tenancy agreements as she wanted a template to use. However, she made a number of amendments/additions to the template that she had downloaded. As Neuberger J pointed out in *National Westminster Bank plc v Jones* [2001] 1 BCLC 98 (at [46]), there is a strong presumption that parties to what appear to be perfectly proper agreements on their face intended them to be effective and that they intend to honour and enjoy their respective rights and obligations. It ill beholds a landlord to contend that the tenancy agreement that she granted does not reflect the substance and reality of the legal interest that she had granted.

91. We are satisfied that the only use requirement is satisfied in respect of Unit 10D. Each tenant was granted a residential tenancy of their individual rooms. They shared a kitchen, bathroom and a living space. We are satisfied that their occupation of the living accommodation constituted the sole use of that space.

11. Issue 4: Was an HMO Licence Required for Unit D?

92. Our starting point is section 263 of the 2004 Act (see [49] above). We are satisfied that the Respondent fell within the statutory definitions of both the "person managing" and the "person having control" of Unit 10D. The Respondent received the rents from her tenants.

93. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the 2004 Act:

(i) The Property was an HMO falling within the "standard test" as defined by section 254(2) of the 2004 Act which required a licence (see [37] above):

(a) it consisted of five units of living accommodation not consisting of self-contained flats;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) the living accommodation was occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constituted the only use of the accommodation;

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathroom and toilet.

(ii) At all material times, Unit D was an HMO which required a licence under the mandatory licencing scheme. Had it not been so covered, it would have been required under Haringey's Additional Licencing Scheme.

12. Issue 5: The Defence of Reasonable Excuse

94. The Respondent must establish a reasonable excuse on a balance of probabilities (see *IR Management Services Ltd v Salford CC* [2020] UKUT 81 LC). In *Sutton v Norwich CC* [2020] UKUT 90 (LC), the Deputy Chamber President, Martin Rodger QC, gave the following guidance at [216]:

"Whether an excuse is reasonable or not is an objective question for the jury, magistrate or tribunal to decide. In *R v Unah* [2012] 1 WLR 545, which concerned the offence under the Identity Cards Act 2007 of possessing a false passport without reasonable excuse, the Court of Appeal held that the mere fact that a defendant did not know or believe that the document was false could not of itself amount to a reasonable excuse. However, that lack of knowledge or belief could be a relevant factor for a jury to consider when determining whether or not the defendant had a reasonable excuse for possessing the document. If a belief is relied on it must be an honest belief. Additionally, there have to be reasonable grounds for the holding of that belief."

95. In *Thurrock Council v Daoudi* [2020] UKUT 209 (LC), the Deputy Chamber President made the following observation (at [27]:

> "No matter how genuine a person's ignorance of the need to obtain a licence, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence. "

96. *R (Mohamed and Lahrie) v Waltham Forest LBC* [2020] EWHC 1083 (Admin); [2020] 1 WLR 2929, Dingemans LJ (at [46]) held that the strict liability nature of the offence is relevant, because:

> "… [it] will promote the objects of the 2004 Act by ensuring that those who control or manage a property which is [an] HMO take reasonable steps to ensure that their properties are registered as HMOs where necessary. This promotes proper housing standards for tenants living in HMOs."

97. In the Respondent's Submissions (at R1.1), it is contended that Ms Hancher had a reasonable excuse for not applying for a licence as she believed that "warehouse living" was exempt from the HMO licencing regime. Had this been her belief, the Tribunal would have expected her to adduce evidence to support her defence from Haringey's Private Sector Housing Team.

98. Mr Hart asked the Tribunal to have regard to the fact that Haringey have failed to take any action, despite being involved with the property since 2020. This was during the Covid-19 lock down period. Haringey's Private Sector Housing Team have not inspected Unit 10D.

99. In her witness statement (at R1.11), Mr Hancher gives a somewhat different explanation. At [47] to [50] she explains how her architect had inaccurately advised her that she required an HMO licence. She had also been inaccurately advised by her architect that internal modifications were required to make the accommodation compliant with the statutory requirements. It was only after the Applicants had vacated Unit 10D, that she learnt that this advice was inaccurate. She had informed the Applicants that she required an HMO licence and this had led them, erroneously, to make the current applications.

100. At [51], Ms Hancher gives a different gloss. It was her belief that the tenants at Unit D lived and worked at the property and this was consistent with "warehouse living" which is exempt from the HMO licencing regime. She makes this assertion, despite having granted tenancies which prohibited the tenants from using their accommodation for anything other than a home.

101. Ms Hancher's evidence to the Tribunal was equally confused. At the end of the hearing, Mr Hart sought permission to adduce evidence of Ms Hancher's correspondence with her architect, Mr Koritsas. With some reluctance, we acceded to this application. The further evidence does not take the matter any further:

(i) On 4 May 2018, Mr Koritsas sent an email after a meeting with Ms Hancher (at R5.1). He agreed to write shortly about "a plan of action to sort out the use

of your building, its access, safety, and the matter of the gas theft". There is reference to Haringey's Development Management DPD and their new designation of "warehouse living" (see [81] above). There is no reference to whether or not an HMO licence might be required.

(ii) On 2 March 2020 (R5.4), Ms Hancher instructed Mr Koritsas to go ahead with work to Units 10C and 10D to make them "compliant with current health and safety regulations for HMOs".

(iii) On 24 June 2020 (R5.9-14), there is an exchange of emails. It is apparent that a package of works were proposed and that the tenants had agreed to temporarily vacate the promises whilst these were executed. Mr Koritsas was asserting that works would need to be executed before an application was made for a licence. Ms Hancher was concerned about the cost of the works and wanted further estimates to be provided.

(iv) On 25 June 2020 (at R5.13), Mr Koritsas provided drawings for the proposed works to Units 10C and 10D.

(v) On 6 July 2020 (R5.5), Mr Koritsas provided amended drawings.

102. Ms Hancher told the Tribunal that in December 2020, she started an HMO application. She stated that the proposed works to Units C and Unit D were estimated to cost some £40k. An HMO licence fee of £750 was small in comparison. However, on 2 February 2021 (at A1.395), Ms Russell informed Justice for Tenants that the landlady had started an application on Haringey's on-line system. However, when prompted to complete it, she advised Haringey that the property had been empty since 31 December. She would not be reletting it as an HMO as she was selling the property. All the tenants at Unit 10D had left by this date. Ms Katz and Ms James did not vacate Unit B until March 2021.

103. On 13 August 2018 (R5.2), Ms Hancher received an offer of £2m for the purchase of the freehold in Unit 10. The offer was made by Jonathan Brewin on behalf of a group of artists who intended to use the building as "studio space in its current form", Ms Hancher told the Tribunal that she still hopes to complete this sale.

104. Ms Hancher has failed to satisfy the Tribunal that she has any defence of reasonable excuse for failing to licence Unit D. She has failed to satisfy us that she reasonably believed that the property was exempt as it was "warehouse living". Rather, her architect had informed her that a licence was required. Further, Ms Hancher had not let Unit D to the tenants as "warehouse living". She had granted them ASTs. She required them to be in employment. Their tenancy agreements required them to occupy their rooms as their homes.

13. Issue 6: The Assessment of the RROs

105. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord

was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. There is no relevant award of universal credit which needs to be deducted.

106. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account: (i) the conduct of the landlord: (ii) the conduct of the tenant: (iii) the financial circumstances of the landlord. (iv) whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There are no relevant convictions. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Fancourt J in *Williams v Parmar* [2021] UKUT 244 (LC).

107. The Tribunal has first considered whether to make a reduction in respect of the utility bills and council tax which were paid by Ms Hancher. Ms Hancher referred to the mortgage payments which she was making. However, this is not something that we should take into account as she is acquiring a capital asset. No sufficient evidence was adduced to persuade us to make any reduction in respect of any outgoings.

108. The Tribunal is required to have regard to the conduct and financial circumstances of the Respondent. No evidence was adduced relating to Ms Hancher's financial circumstances, other than comment that at times she found difficulty in affording her mortgage payments due to rent arrears accrued by her tenant of Unit B. We note that she owns three other properties available for rent one of which is an HMO. She also owns an additional property in Shoreditch where she lives. She is planning to sell Unit 10 for £2m.

109. We have had regard to the living conditions at Unit D. The living condition were basic, but this is partly reflected by the rents which were charged. The staircase up to the flat was not suitable for living accommodation and Ms Mears had a fall. Mr Koritsas identified a range of works that were required to improve the means of escape. These works were not executed. HMOs present particular housing problems. The chances of being killed or injured by a fire in an HMO are many times greater than for residents in other dwellings. HMOs can also present a number of other risks to health and safety for those who live in them. This is one reason why HMOs require a licence.

110. The Tribunal is required to have regard to the conduct of the Applicants. There are no grounds for making any reduction on grounds of the conduct of the tenants, save where there were arrears of rent.

111. Taking all these matters into account, we have decided to make the following RROs:

(i) Mr David occupied Room 1 at Unit 10D between 1 December 2017 and 20 December 2020. He seeks a RRO in the sum of £7,892.36 for the period December 2019 and 20 November 2020 (a period of 11.5 months). A Schedule of Payments is at A1.337. He has provided proof of these payments (at A1.340-

351). No rent was payable for August 2020, as he had made an arrangement with Ms Hancher to vacate his room for two months whilst she executed urgent works to improve the fire precautions. In the event, these works were not executed and Ms Hancher decided to sell Unit 10. We make a RRO in the sum of £7,892.36.

(ii) Ms Mears applies occupied Room 5 at Unit 10D between 25 January 2020 and 20 December 2020. She seeks a RRO in the sum of £6,464.58 for the period 25 January 2020 and 20 December 2020. Ms Mears seeks a RRO in respect of the nine rent payments which she made between 15 January and 29 October 2020 in the sum of £6,464.58. As with Mr David, it had been agreed that no rent was payable for August. A Schedule of Payments is at A1.336. She has provided proof of payment (at A1.381-390). We make a RRO in the sum of £6,464.58.

(iii) Mr Cramer occupied Room 3 at Unit 10D between 14 May 2019 and 16 October 2020. He seeks a RRO in the sum of £8,775 for the period 14 July 2019 and 13 July 2020. A Schedule of Payments is at A1.339. He has provided proof of these payments (at A1.352-366). Mr Cramer explained that he made no payments after 1 June as he had learnt that the property was being rented illegally. This does not seem to be strictly correct. Ms Hancher allowed him to return to Room 3 on 14 August. Thereafter, he did some work for her. There is an email, dated 7 December 2020 (at R2.82), which sets out the final statement of accounts between them. Mr Cramer agreed that he owed Ms Hancher arrears of rent of £651. On 28 October (at R2.83), he had agreed to pay this by three monthly instalments in November, December and January. Mr Cramer admitted that he had not paid these sums, and that the debt of £651 is still outstanding. We therefore make a RRO in the sum of £8,124.

(iv) Ms Morel-Fonteray occupied Room 4 at Unit 10D between 1 May 2019 and 15 September 2020. She seeks a RRO in the sum of £8,820 for the period 1 August 2019 to 31 July 2020. A Schedule of Payments is at A1.338. She has provided proof of these payments (at A1.367-380). In May 2020, during the first Covid-lockdown, Ms Morel-Fonteray went to France for two months so that she could be near to her family. Her employer allowed her to work from France. She paid rent during this period. Mr Hart referred to an email (at R2.96) suggesting that Ms Hancher had overpaid her by £194.50 when she had left. We accept Ms Morel-Fonteray's evidence that there was no such overpayment. We make a RRO in the sum of £8,820.

14. Repayment of Tribunal Fees

112. The two Applicants from Unit 10C have failed in their application. We make no order in respect of the tribunal fees which they have paid. The four Applicants from Unit 10D have succeeded. It is therefore appropriate to order that the Respondent refund to them the tribunal fees of £200 which they have paid.

Judge Robert Latham
4 April 2022

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.