FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMF/2021/0170**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**71A Greenleaf Road, London, E17 6QW**
Applicant	**:**	**Mr Tetsuo Mukai**
Representative	**:**	**Ms Kaushalya Balaindra, Caseworker at Safer Renting**
Respondent	**:**	**Dr Lee Faulkner**
Representative	**:**	**Mr Karol Hart, solicitor, of Freemans Solicitors**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Ms F Macleod MCIEH**
Date of Hearing	**:**	**11th January 2022**
Date of Decision	**:**	**4th February 2022**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading "Decisions of the tribunal".

Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicant by way of rent repayment the sum of £5,400.00.

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

Introduction

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

2. The basis for the application is that the Respondent was controlling and/or managing a house which was required under Part 3 of the Housing Act 2004 ("**the 2004 Act**") to be licensed at a time when it was let to the Applicant but was not so licensed and that it was therefore committing an offence under section 95(1) of the 2004 Act.

3. The Applicant's claim is for repayment of rent paid during the period from 1st May 2020 to 30th April 2021 in the amount of £10,800.00.

Applicant's case

4. In written submissions the Applicant states that the Respondent rented the Property to the Applicant and to Ms Bernadette Deddens and their child from around February 2014 until 26th September 2021. From 1st May 2020 the Respondent continued to rent out the Property despite failing to renew the selective licence required for the Property.

5. The Property is within the London Borough of Waltham Forest. The Council runs a selective licence scheme which requires all landlords to register for a licence if they rent out a self-contained flat which is let or occupied to a single household or to no more than two unrelated persons. The initial selective licensing scheme ran from April 2015

until 31st March 2020. A new selective licensing scheme was then put in place on 1st May 2020 to replace the previous scheme.

6. On 5th January 2021, the Applicant contacted the Property Licensing Department within the Council to enquire about the licensing status of the Property. He was informed verbally that the licence for the Property had expired. On 6th January 2021, the Applicant then emailed the Council detailing some concerns that he had regarding his occupation of the Property, including in connection with the Respondent's decision to sell the Property.

7. On 23rd November 2020, the Respondent wrote to the Applicant informing him that she would not be renewing the tenancy agreement, but she failed to serve a Section 21 Notice.

8. On 8th January 2021, the Applicant contacted the Council requesting written confirmation of the current licensing status of the Property. In response, the Council confirmed that the Property did not have a current licence and that the previous licence had expired on 31st March 2020. The Council also wrote to the Respondent on 8th January 2021 informing her that the Property did not have the requisite licence.

9. The Respondent finally did serve a formal Section 21 Notice on the Applicant (received on 7th May 2021), and then on 10th May 2021 the Applicant emailed the Respondent stating that as a result of the Property being unlicensed the Section 21 Notice was invalid. According to the Respondent a Section 21 Notice was served back in November 2020, but the Applicant denies receiving a Section 21 Notice at that time.

10. Ms Marina Boatswain, Private Sector Housing and Licensing Enforcement Officer within the Council, has confirmed in writing that the Respondent did not renew the licence until 14th May 2021.

11. In connection with the proposed sale of the Property, viewings were held but the Applicant felt that was not given reasonable notice and he was also concerned about potential breaches of the COVID-19 pandemic regulations. Details of what the Applicant states happened on each occasion are set out in his bundle.

12. The Applicant states that he has been diligent with rent payments, has promptly notified the Respondent of any repairs that needed to be carried out. With respect to the property viewings, he asserts that he had valid reasons for wanting to cancel or reschedule them.

13. The Applicant has provided a copy of his tenancy agreement and evidence of rental payments. He submits that in accordance with the Upper Tribunal decision in *Vadamalayan v Stewart & Ors [2020]*

UKUT 183 the Applicant is entitled to the full amount of rent paid during the relevant period.

Respondent's case

14. In written submissions the Respondent accepts that the Property required a selective licence. The previous scheme had expired on 1st April 2020 and the new scheme was not implemented until 1st May 2020. She therefore accepts that a licence should have been in place during the period between 1st May 2020 and 14th May 2021 (when a licence was applied for).

15. However, under section 95(4) of the 2004 Act, the Respondent will not have been guilty of an offence under section 95(1) if she can demonstrate she had a reasonable excuse for not having licensed the Property, and she submits that she did have a reasonable excuse. In essence, she had left the management of the Property with Central Estate Agents since 2014 and they had failed to notify her that the selective licence lapsed on 1st April 2020. Furthermore, the Respondent was not living in London and was therefore particularly reliant on the agents contacting her regarding any issues arising in relation to the Property. She also states that there was confusion on the part of the agents and herself surrounding the selective licencing scheme as there was a break of one month between the licence expiring and the introduction of the new scheme.

16. In addition, the Respondent states that the Applicant was aware that the Property did not have a licence following communication with the Council on 6th January 2021 but that at no time between his becoming aware that the Property was unlicensed and the licence application being submitted did he or the Council seek to inform the Respondent. The Respondent submits that the Applicant should not be afforded a rent repayment for the period from which he became aware that the Property was unlicensed, or at least that any rent repayment for this period should be significantly reduced.

17. In relation to the parties' conduct, the Respondent states that the Applicant clearly did not want to leave the Property after being served with a section 21 notice. All safety checks and maintenance of the Property were conducted when required or requested by the Applicant, and the length of time the Applicant resided at the Property shows that he enjoyed living at the Property and had no issues. In addition, the Applicant failed to allow viewings at the Property and this was a contributing factor to the Respondent not being able to sell the Property. Finally, additional costs were paid for cleaning on two occasions in the sums of £492 and £612 and these should be deducted from the rent repayment sum as per the Upper Tribunal decision in *Vadamalayan*.

18. As regards the Respondent's financial circumstances, the Respondent has no income following retiring from employment around a year ago and has been informed she will not be able to claim from her pension until late 2022. She is currently living off savings, and has been unable to sell the Property and relocate to Liverpool where the cost of living is lower.

19. The Respondent has no previous convictions and is of good character.

20. As well as the *Vadamalayan* case, the Respondent has referred to the Upper Tribunal decision in *Williams v Parmar & Ors [2021] UKUT 244 (LC)*.

21. At the hearing, after some discussion, the Respondent accepted that the Applicant had paid £10,800 in respect of the period of their claim and therefore that £10,800 was the agreed starting point for a rent repayment order if the tribunal was minded to grant one.

Follow-up points at hearing

22. The Applicant acknowledged that he had not brought to the Respondent's attention her obligation to license the Property but said that he was under no obligation to do so and there was no intention to mislead.

23. Regarding the Respondent's claim that he failed to allow viewings of the Property in the context of her attempts to sell, the Applicant submitted that the Respondent's narrative on this issue was misleading. He had sound reasons for being uncomfortable about the way in which viewings were being organised in the light of the ongoing pandemic, and there were occasions on which he was not given enough notice. In addition, the Respondent did not comply with the rules agreed between them as to how many people could be in the Property and what information to provide in advance. In response, the Respondent re-asserted her view that the Applicant did seem to be slightly obstructive at times.

24. Regarding the deductions for cleaning being claimed by the Respondent, the Applicant said that the reason for the cleaning bills was toxic remains caused by a faulty oven. The Respondent in response did not accept that there was any evidence of a faulty oven.

25. There was also an exchange between the parties at the hearing regarding a dispute about the rent deposit which will briefly be referred to later.

26. The Applicant accepted in cross-examination that he was broadly happy living at the Property. He also accepted that the Respondent offered a

rent reduction because of the pandemic, although the reduction in his view was offered in return for his being accommodating regarding viewings.

27. The Respondent said in cross-examination that she did not receive the letter from the Council in January 2021. In relation to viewings, she accepted that the parties had agreed rules between them, but there were occasions when she gave adequate notice but the Applicant still refused entry. She accepted that in refusing entry the Applicant was not deliberately trying to be difficult, but neither was he being very accommodating.

28. Aside from the issue re viewings, the Respondent accepted that the Applicant had been a good tenant, aside from a slight issue regarding a delay in telling her about a problem with the fence.

Relevant statutory provisions

29. Housing and Planning Act 2016

Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers

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

Section 41

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

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

Section 43

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

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

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

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

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

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 95

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

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

Tribunal's analysis

30. The Respondent has accepted that the Property was not licensed at any point during the period of the claim and that it was required to be licensed. She also does not deny that she was the landlord for the purposes of the 2016 Act, nor that she was a "person having control" of the Property and/or a "person managing" the Property, in each case within the meaning of section 263 of the 2004 Act.

31. We are satisfied based on the evidence before us that the Property required a licence under the local housing authority's selective licensing scheme throughout the period of the claim. We are also satisfied on the evidence that the Respondent had control of and/or was managing the Property throughout the relevant period and that the Respondent was "a landlord" during this period for the purposes of section 43(1) of the 2016 Act.

The defence of "reasonable excuse"

32. Under section 95(4) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

33. The Respondent submits that she did have a reasonable excuse in that she left the management of the Property with Central Estate Agents and they failed to notify her that the selective licence lapsed on 1st April 2020. She was not living in London and was therefore particularly reliant on the agents contacting her regarding any issues that arose in relation to the Property. She also states that there was confusion surrounding the selective licencing scheme as there was a break of one month between the licence expiring and the introduction of the new scheme.

34. We do not accept the Respondent's arguments. Mere ignorance of the position, if the Respondent was indeed ignorant, is insufficient for these purposes. It was incumbent upon the Respondent to satisfy herself as to the legal requirements relating to the letting of the Property, and it is not enough simply to state that she was relying on an agent or to imply that the break in the licensing scheme so confused her that it was reasonable for her not to have obtained a licence. If the position were otherwise, the 2016 Act would lose much of its force. We therefore do not agree that the Respondent had a reasonable excuse for he purposes of section 95(4).

The offence

35. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed HMO under section 95(1) of the 2004 Act is one of the offences listed in that table.

36. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. Having determined that the Respondent did not have a reasonable excuse for failing to license the Property, we are satisfied beyond reasonable doubt that an offence has been committed under section 95(1), that the Property was let to the Applicant at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

Amount of rent to be ordered to be repaid

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

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

39. In this case, the claim does relate to a period not exceeding 12 months. There is also no suggestion that universal credit had been paid in respect of the rent.

40. On the basis of the Applicant's evidence, which in this respect is not disputed by the Respondent, we are satisfied that the Applicant was in occupation for the whole of the period to which the rent repayment application relates and that the Property required a licence for the whole of that period. There is also no dispute between the parties as regards the amount of rent paid by the Applicant in respect of this period and no suggestion that there is any separate period in respect of which there exist any rent arrears.

41. Under sub-section 44(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 the relevant part of the 2016 Act applies.

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

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

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

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

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

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

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

49. The landlord in the *Williams* case was a first offender with no relevant convictions but was also a professional landlord. There was nothing in her financial circumstances or conduct that Mr Justice Fancourt felt justified reducing the amount of the rent repayment order. The landlord only applied for a licence after an environmental health officer had visited and itemised deficiencies of the Property and the absence of a licence. The Property would not have obtained a licence without further substantial works, had the landlord applied for one, and her February 2020 application was in due course refused because the works had not been done. There were serious deficiencies in the condition of the property, which affected the comfort of all the tenants. Mr Justice Fancourt went on to conclude in the circumstances of that case that it was not necessary or appropriate to mark the offending of the landlord with a rent repayment order in the maximum adjusted amount (after taking into account certain undisputed reductions). Leaving to one side the separate position of one particular tenant in that case, he made a rent repayment order of 80% of the agreed adjusted starting point in respect of the other tenants.

50. Therefore, adopting the approach of the Upper Tribunal in the above cases, in particular the latest case of *Williams*, and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

51. The Applicant's conduct has been good. There have been minor arguments regarding cleaning bills, a garden fence and the deposit, but we do not find the evidence conclusive either way on the garden fence and deposit points and on balance we prefer the Applicant's evidence on the cleaning bills. In addition, the sums involved are relatively small. The Respondent has expressed concerns about the Applicant being obstructive in relation to allowing viewings of the Property, but on the evidence before us we do not accept that he was obstructive. It is certainly arguable that he was more cautious about the pandemic than the average person, but the pandemic has caused many rational people to be extremely careful about social distancing and about other ways of protecting oneself from the pandemic, and in our view his explanations are sufficiently satisfactory that his actions do not constitute poor conduct.

52. We also do not accept that the Applicant's failure to alert the Respondent to the need for a licence amounts to poor conduct. First of all, it is for the person who is in control of and/or managing a property to avoid committing a criminal offence by (in this case) failing to license the property. Secondly, the evidence before us does not demonstrate that this was a cynical ploy on the part of the Applicant to trap the Respondent into letting the Property out without a licence for as long as possible so that he could make a large claim for rent repayment.

53. The Respondent's conduct has also been broadly good aside from the very serious matter of failing to license the Property. Her failure to license, whilst not being a failure for which she had a reasonable excuse for the purposes of section 95(4), was not as culpable as it could have been. She is not someone with a property portfolio and there is no evidence that her failure to license the Property was deliberate. The Property was seemingly in a good and safe condition and the evidence indicates that she was a good landlord. A possible objection could be made in relation to the way in which she served notice on the Applicant purporting to terminate the tenancy and then arranged viewings of the Property at short notice, but our overall impression was that any failings on her part on this regard were a result of a lack of information and/or professional advice rather than any intention to harass or cause difficulties for the Applicant.

Financial circumstances of the landlord

54. The Respondent has stated that she has no income following retirement from employment around a year ago and has been informed that she will not be able to claim from her pension until late 2022. She is currently living off savings, and has been unable to sell the Property and relocate to Liverpool where the cost of living is lower. The

Applicant has not offered any evidence to counter the Respondent's statement regarding her financial circumstances.

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

55. The Respondent has not been convicted of a relevant offence.

Other factors

56. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. One factor identified by the Upper Tribunal in *Vadamalayan* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services. However, in the present case the Respondent is not arguing that any deductions need to be made for utility costs.

57. The Respondent has instead argued that certain cleaning costs should be deducted from any rent repayment order, but we are not persuaded that this is correct. On balance we prefer the Applicant's evidence on this point, namely that the cleaning costs resulted from a problem with a faulty oven.

58. We are not persuaded that there are any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

59. The first point to emphasise is that a criminal offence has been committed. There has been much publicity about licensing of privately rented property, and no mitigating factors are before us which adequately explain the failure to obtain a licence. The Respondent claims ignorance of the position, but this is not a sufficient excuse; it is incumbent on those who let out properties to acquaint themselves with the relevant legislation, the purpose of which is to guarantee tenants certain minimum standards of safety and comfort.

60. We are also aware of the argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence.

61. Secondly, there is no persuasive evidence before us that the Applicant's conduct has been anything other than good. Thirdly, even if it could be

argued that the Applicant did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

62. On the other hand, aside from the very important fact of her failure to obtain a licence, the evidence before us indicates that the Respondent's conduct has been good. The evidence indicates that the Property was in a good and safe condition throughout the tenancy. In addition, the Respondent is not someone with a property portfolio and nor does the evidence indicate that the offence was deliberate. Furthermore, the Respondent has not at any time been convicted of a relevant offence. Finally, the evidence before us indicates that the Respondent's financial circumstances are not particularly good.

63. Therefore, and in particular taking into account the recent decision in *Williams*, in our view there is significant scope for deductions from the *Vadamalayan* starting point of 100% of the amount of rent claimed. Taking all the circumstances together, including the good condition of the Property, both parties' good conduct, the Respondent's relatively poor financial circumstances and the lack of any criminal conviction, we consider that a 50% deduction would be appropriate in this case. To deduct any more in these circumstances would in our view serve to downplay the seriousness of the offence and weaken the deterrence value of the legislation.

64. As the amount claimed is £10,800.00, a 50% deduction would reduce this to £5,400.00. Accordingly, we order the Respondent to repay to the Applicant the total sum of £5,400.00.

Cost applications

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

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

Name: Judge P Korn **Date:** 4th February 2022

RIGHTS OF APPEAL

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

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.