



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

**Case Reference** : **CHI/21UD/HMG/2020/0003**

**Property** : **14 Wellington Road, Hastings,  
TN34 3RN**

**Applicant** : **Ms Kathryn Awad**

**Representative** : **Mr Robert Denman  
Holden & Co LLP**

**Respondent** : **Mrs Barbara Hooley**

**Representative** : **Mr Desmond Taylor  
Landlords Defence Ltd**

**Type of Application** : **Application for a Rent Repayment  
Order by tenant (ss40 to 45  
Housing and Planning Act 2016)**

**Tribunal Members** : **Judge R Cooper  
Mr R Athow FRICS MIRPM  
Ms J Herrington**

**Date and venue of  
Consideration** : **9<sup>th</sup> July 2020  
Havant Justice Centre (remote  
hearing – fully audio)**

**Date of Decision** : **5<sup>th</sup> August 2020**

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**DECISION**

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**The Applicant is entitled to a Rent Repayment Order.**

**The Respondent must pay the sum of £849.18 to the Applicant within 28 days.**

**The Applicant's application for reimbursement of the application fee (£100) and hearing fee (£200) is dismissed. The Applicant did not pay any fees.**

### **The Application**

1. On 14<sup>th</sup> February 2020 the Tribunal received an application from the Applicant tenant under s41 Housing and Planning Act 2016 ('the 2016 Act') seeking a Rent Repayment Order ('RRO').
2. The Applicant seeks to recover from the Respondent the rent she paid for her occupation of 14 Wellington Road, Hastings, TN34 3RN for the period 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 ('the Relevant Period')
3. The Applicant also applies for reimbursement of the application fee £100 and hearing fee of £200.
4. Judge Tildesley OBE issued directions on 2<sup>nd</sup> March 2020 that were complied with by the parties. His directions notice confirmed that the issues for the Tribunal to consider were as follows;
  - (i) whether the Tribunal was satisfied beyond all reasonable doubt that the Respondent had committed one or more of seven specified offences, or whether a financial penalty had been imposed for such offence;
  - (ii) the date of the offence/financial penalty
  - (iii) whether the offence was committed in the period of 12 months preceding the day of the application
  - (iv) what the applicable 12 month period is for the purposes of s45(2) of the 2016 Act
  - (v) what the maximum amount the Tribunal could order under s44(3) of that Act and
  - (vi) whether the Tribunal should reduce that maximum amount, in particular, for any of the specified reasons.

### **Background to the application**

5. On 26<sup>th</sup> October 2015 Hastings Borough Council adopted a selective licencing scheme under Part 3 of the Housing Act 2004 requiring any private landlord renting out a property within the designated area to obtain a licence before doing so.

6. The Applicant, Ms Awad, previously resided at 16 Wellington Road, Hastings TN34 3RN.
7. The Respondent granted Ms Awad a tenancy of 14 Wellington Road, Hastings TN34 3RN('the Property') to commence on the 12<sup>th</sup> June. The tenancy agreement was signed at some point between 10<sup>th</sup> and 13<sup>th</sup> June 2017. The rent is due on the 10<sup>th</sup> day of each month, but there is a dispute between the parties regarding the rent due under the terms of tenancy (see below at [28] to [30]).
8. The Respondent landlady is Mrs Barbara Hooley, the freehold owner of the Property. Mrs Hooley had lived in the Property with her first husband as their matrimonial home from 1986 until he died in 2013. She subsequently moved to Bexhill to live with Mr Hooley (who is now her second husband). Initially, from 2013 the Respondent's son and his wife continued to occupy the Property, but in January 2017 they moved out. The Respondent renovated the Property with a view to letting it out to obtain an income. In June 2017 the Applicant and her family moved in.
9. In October 2019 the Respondent issued a claim for possession of the property in Hastings County Court on the grounds of the Applicant's rent arrears. A possession order was made on 17<sup>th</sup> January 2020 when District Judge Owen also gave judgment for rent arrears of £8,118.08 (R:67). Ms Awad appealed, and the possession order was subsequently set aside by consent (R:68) as Mrs Hooley accepted she had failed to comply with the requirements for service of notice under s8 Housing Act 1988.
10. In February 2020 the Applicant issued her application for a Rent Repayment Order on grounds that the Respondent was required to have a licence before renting the property to her in June 2017 but did not have one.

### **Issues in the appeal**

11. The Applicant applies for a RRO under s41 of the 2016 Act for the period 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 ('the Relevant Period'). She claimed the sum of £6,029.04 in rent paid over that period (A:24). (The sum claimed was subsequently amended in the course of proceedings as set out at [32] below).
12. An RRO can only be made where the Tribunal is satisfied that the Respondent had committed one or more of the seven specified offences (set out in s40 of that Act). In this case, the Applicant asserts the Respondent committed an offence under s95(1) Housing Act 2004 ('the 2004 Act') as she failed to obtain a licence from Hastings Borough Council as required by the selective licencing scheme in operation from October 2015.

13. Before making an RRO the Tribunal must be satisfied to the criminal standard (i.e. beyond reasonable doubt) that the specified offence has been committed (s43(1)).
14. If satisfied an offence has been committed, s43(3) requires the Tribunal to consider the amount of the RRO which must be determined. In the case of an application made by a tenant the relevant factors are set out in s44.
15. The amount of the RRO must relate to the rent paid in a period not exceeding 12 months during which time the landlord was committing the offence (s44(2)). It must not exceed the rent paid by the Applicant in respect of that period (less any Universal Credit (or Housing Benefit) paid) (s44(3)). The Tribunal must take into consideration the matters set out in s44(4) namely conduct of the Applicant and Respondent, the financial circumstances of the Respondent and whether she had been convicted or fined for any of the offences listed in s40(3).
16. In this application there is a dispute regarding the rent due under the terms of the Applicant's tenancy agreement for the Property. Accordingly, the Tribunal must also reach a determination as to the amount due under the tenancy, and the amount of actual rent the Applicant paid to the Respondent in respect of the Relevant Period.

#### The Law

17. The applicable law referred to in this decision is set out in full in the Appendix to this decision.

#### **The hearing**

18. The hearing was a remote hearing by telephone. The Applicant attended and was represented by Mr Robert Denman. The Respondent did not initially attend the hearing but was represented by Mr Desmond Taylor who said her oral evidence was not required. However, following the Tribunal's initial indication that the weight of her written evidence might be impacted by her non-attendance, Mrs Barbara Hooley attended the hearing from 11.25am.
19. During the course of the hearing Mr Taylor sought to introduce additional documentary evidence on which he sought to rely, demonstrating that the Applicant was carrying on a business from the premises. The Tribunal refused to admit that evidence. Although we accepted Mr Taylor had been instructed very late in the day, it was clearly evidence that he had seen before commencement of the hearing. The evidence had not been disclosed to the parties or the Tribunal and nor had an application been made to admit it late. Fairness requires that a party must know of evidence that is being relied on so they have an opportunity to respond.

20. There were a number of breaks during the hearing. There were also occasional technical difficulties with individuals (including panel members) dropping out of the conference call. However, at the end of the hearing both representatives confirmed they were satisfied with the conduct of the hearing, and despite the technical difficulties it had been a fair hearing.
21. At the conclusion of the hearing, the Tribunal directed the Applicant to serve further information within 14 days; copies of her award notices for Housing Benefit from 2017 until it ceased, a screenshot of her first Universal Credit payment breakdown detailing the rent figure used in the calculation, together with details of the Council Tax payable for the property for each financial year from 2017. The Applicant has failed to comply with those directions.

### **Decision and reasons**

(References in this decision to documents in the Applicant's bundle are prefaced with 'A:' and those from the Respondent's are prefaced with 'R:')

*Did Mrs Hooley commit an offence under s95(1) Housing Act 2004?*

22. At the outset Mr Taylor confirmed that the Respondent accepted:
  - (i) That the Property fell within the area covered by the selective licencing regime adopted by Hastings Borough Council ('the Council') on 26<sup>th</sup> October 2015,
  - (ii) That she was required to have a licence in order to let her property, and
  - (iii) That she did not have one (for which she apologised).
23. On the basis of Mrs Hooley's admissions and the statement of Deborah Watts, of the Council's Housing Licencing team (A:108), the Tribunal is satisfied beyond reasonable doubt that the Respondent did commit an offence under s95(1) of the 2004 Act by failing to have a licence from 12<sup>th</sup> June 2017 (when she let the property to the Applicant) until her application on 12<sup>th</sup> February 2020 (R:19) when the property fell within Hastings Borough Council's selective licensing area.

*Was the offence committed in the 12 month period immediately preceding receipt of the application?*

24. As the Applicant's application was received by the Tribunal on 14<sup>th</sup> February 2020, we found the offence was committed in the 12 month period immediately prior to the application (s41(2)). The Tribunal, therefore, has jurisdiction to make a rent repayment order.

*What is the total amount of the RRO that could be awarded by the Tribunal?*

25. Section 44(2) provides that in relation to an offence under s95(1) the amount of the maximum that can be ordered by the Tribunal is repayment of rent for a period of 12 months. There is no requirement that the twelve-month period should immediately precede the application (although in many cases it does). In this case as the offence has been committed from 12<sup>th</sup> June 2017, the period of 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 is less than 12 months during which the Respondent committed an offence under part 3 Housing Act 2004.
26. The issues the Tribunal had to determine, therefore, were
  - (i) the rent liability under the tenancy agreement,
  - (ii) the rent that was paid in respect of the period 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 (less any housing benefit or housing cost element of Universal Credit),
  - (iii) whether the maximum rent repayment that could be ordered should be reduced.

*What was the rent due under the tenancy agreement?*

27. The Applicant adduced in evidence two tenancy agreements in virtually identical terms, one with a rent payable of £1,000 per calendar month (A:4) and the other for '*£1,200 less council tax*' (A:10).
28. The Applicant says the original agreement she signed with the Respondent provided for a rent of £1,000 per calendar month, but then Mrs Hooley forced her to sign a second agreement for £1,200 a few days later which she said was for '*tax reasons*' (A:2).
29. Mrs Hooley says there was only ever one agreement with a rent of £1,200 per calendar month. However, she accepted that the signature on both agreements appeared to be hers.
30. The Tribunal finds it is more likely than not that the agreement between the parties provided for a rent of £1,200 per calendar month for the following reasons;
  - (i) The Applicant's claim is completely at odds with the documents before us. The tenancy agreement for '*£1,200 per calendar month less payment of Council Tax*' was dated 10<sup>th</sup> June 2017 consistent with it being signed shortly before the tenancy began (and consistent with the rental payment date of the 10<sup>th</sup> of each month). The agreement for a rent of £1,000, however, was signed on 13<sup>th</sup> June 2017 (A:7).
  - (ii) If a later agreement was signed varying the rent to £1,000 per month, this appears not to have been relied on by Ms Awad until

possession proceedings were issued by the Respondent in October 2019.

- (iii) Ms Awad told the Tribunal that in her claims for both Housing Benefit (to the Council) and Universal Credit (to the Department of Work and Pensions) she had declared that the rent was £1,200 pcm.
- (iv) That is consistent with the correspondence between the parties which refers to a rent of £1,200 pcm (for example R:48), and Mrs Hooley's statement that the DWP had telephoned her to confirm the rent was £1,200 (R:7)
- (v) Although the tenancy agreement states the rent was '*£1,200 pcm less payment of Council Tax*', the Tribunal finds that in reality, both parties have always treated the rent payable as £1,200 per calendar month without deductions. There is no independent evidence demonstrating that Mrs Hooley ever paid the Council Tax during the period of the tenancy. Although in her statement she said she she felt sorry for the Applicant and made payments of council tax, the bank statements she relies on at A:51 show two payments of council tax made by the Respondent in February and June 2017 i.e. prior to the commencement of the tenancy. Deborah Watts' statement also confirms that the Applicant was registered for Council Tax from 16<sup>th</sup> June 2017 (A:108).
- (vi) The tenancy agreement itself confirms that the Tenant is responsible for paying the Council Tax (clause 2(ii)) and there is no corresponding express provision in the landlord's obligations (in Clause 3) requiring the Respondent to repay that sum to the tenant.

*What rent was paid by the Applicant in respect of the relevant period (i.e. 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019)?*

- 31. Ms Awad initially claimed the sum of £6,029.04 being the rent she says she paid during the period 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019. This is set out in her schedule at A:24. However, Mr Taylor confirmed at the start of the hearing (having reconciled the bank statements of both the Applicant and Respondent) that the Respondent accepted that some payments of rent were missing from the Applicant's schedule. On behalf of the Respondent he accepted that the rent paid by the Applicant during the Relevant Period amounted to £7,184.
- 32. However, when considering the evidence as a whole, the Tribunal finds that six payments were made in addition to those listed in the Applicant's schedule at A:24 which appear in the bank statements of both parties. The Tribunal's findings as regards the rent due and the payments made are set out in the schedule at Appendix 2 to this decision. Notwithstanding Mr Taylor and Mr Denman's agreement as to the rental payments made, the Tribunal finds that during the period 4<sup>th</sup>

December 2018 to 11<sup>th</sup> July 2019 (inclusive) Ms Awad personally paid to Mrs Hooley the sum of £7,334.04. Additionally, two further payments (of housing benefit) were paid, but these cannot be included in any RRO by virtue of s44(3)(b).

33. It is clear also from that rent schedule that the Applicant was in significant arrears prior to the Relevant Period.
34. To assist the Tribunal in determining the maximum amount of any RRO, the panel expressly requested submissions from both parties as to whether payments made during the Relevant Period (i.e. 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019) should be treated as rent for that period or should be attributed to the arrears that had accrued between 12<sup>th</sup> June 2017 and 3<sup>rd</sup> December 2018.
35. Mr Denman submitted that s44(2) provides that the amount of the RRO must relate to the rent paid during a period not exceeding 12 months during which the offence was committed. It did not refer to rental liability during the period. He submitted that s44(3) also referred to the amount not exceeding '*the rent paid*' which the parties agreed was £7,184. If, however, the Tribunal did not accept that construction of s44, then he said the Applicant accepted the arrears owed by Ms Awad as at 3<sup>rd</sup> December 2018 were £2,732.95 (as set out in the Applicant's amended rent statement).
36. Mr Taylor submitted it was clear that the account showed that the Applicant was a person who constantly was in arrears (which had risen from £4,700 to over £13,000), that she was a '*rogue tenant*' who failed to pay the rent, and then took advantage of the Respondent's ignorance of the licencing requirements. He submitted the Applicant had specifically chosen as the Relevant Period a time when rent was being paid, but she was in arrears at the start of that period, and for more than a year from July 2019 had paid no rent at all. He said the Respondent should not be doubly punished by being ordered to repay rent, when the Applicant had not been paying any rent for a substantial period.
37. Section 44(3) confirms that the maximum the Tribunal can order a landlord to repay is the '*rent paid in respect of that period*' (emphasis added). As rent arrears had accrued prior to the Relevant Period, the Tribunal is satisfied that it would be standard accounting practice for any landlady/landlord or council/housing association to apply any payments made during the Relevant Period firstly to any arrears that had accrued prior to the date of payment. Therefore because of the accrued rent arrears, the Tribunal found that any payments actually made by Ms Awad in the Relevant Period should be treated as being made '*in respect of*' earlier periods when rent had not been paid, before being applied to the rent due during the Relevant Period. This required the Tribunal to make a determination of any rent arrears as they stood at 3<sup>rd</sup> December 2018.



38. In assessing the level of the arrears that had accrued by 3<sup>rd</sup> December 2018, the Tribunal found that in addition to payments made by Ms Awad herself, various payments were made by a number of other individuals that had to be included as payments of rent by the Applicant to the Respondent. In addition, Housing Benefit had been paid directly to the Respondent.
39. Both parties confirmed that Chelsea is the Applicant's daughter who was living at the Property. The Local Authority treated her as a non-dependent for Housing Benefit purposes. Although mainly Chelsea paid money directly to the Applicant's account (e.g. A:27, 31, 33 and so on) so Ms Awad could then use it to pay the rent to the Respondent (if she chose to do so), on a number of occasions Chelsea made payments directly to the Respondent (for example R:58 and 59). We were satisfied Chelsea's payments to the Respondent had to be included as payments towards the Applicant's rental liability.
40. Ms Lisa Drury (or L.D.) also made a number of payments to the Respondent between November 2017 and March 2018. It was common ground that Ms Drury moved into 14 Wellington Road (with the Respondent's consent) because she was fleeing domestic violence and was paid money by the council for her accommodation. However, the Respondent says the payments by Lisa Drury were due to Mrs Hooley on top of the rent owed by Ms Awad, but we find this not to be the case. Ms Drury was occupying a room in the property rented by Ms Awad, thereby reducing the accommodation available for Ms Awad's family. Although Ms Drury may have been given money by the Council for her accommodation, we find this to be a contribution towards the total rent due by Ms Awad to Mrs Hooley. It was clear that Ms Awad had throughout the term of the tenancy had found it impossible to pay the rent in full and on time, which may have led to the agreement to allow Ms Drury to move in. Furthermore, no independent evidence has been produced of a separate tenancy agreement between Mrs Hooley and Ms Drury.
41. The Tribunal is also satisfied that other payments were made towards Mrs Awad's rental liability. The various credit with the reference 'top up rent' (for example credits of £200 and £150 on 11<sup>th</sup> and 30<sup>th</sup> October 2018 (R:60)) were clearly intended to be payments towards the Applicant's rent. There are also numerous direct payments of housing benefit.
42. On balance, the Tribunal is satisfied that payments totalling £18,467.05 were paid between 12<sup>th</sup> June 2017 and 3<sup>rd</sup> December 2018 from all sources towards Ms Awad's rental liability of £21,600.00 (as set out in Appendix 2 to this decision). The Tribunal is therefore satisfied that by 3<sup>rd</sup> December 2018 Ms Awad's accrued rent arrears amounted to the sum of £3,132.95.
43. Mr Taylor says the period of 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 was specifically chosen by the Applicant because it was a period when she

personally made the most payments towards her rental liability. We find this to be the case. In the seventeen months immediately preceding the 4<sup>th</sup> December 2018 Ms Awad paid less than £4,000 of the £18,467.05 actually paid, whereas in the seven months from 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019 she paid over £7,300.

44. On balance, when looking at matters in the round, the Tribunal is satisfied that *'the rent paid in respect of'* the Relevant Period (i.e. 4<sup>th</sup> December 2018 to 11<sup>th</sup> July 2019) less any payments of housing benefit amounted to £4,201.09 (i.e. £7,334.04 less the arrears of £3,132.95). That is the maximum amount the Respondent could be ordered to repay.

*Should the maximum be ordered or should it be reduced?*

45. The Upper Tribunal in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) (in particular [19]) made clear that the only relevant matters for the Tribunal when determining whether anything other than the maximum rent should be repaid under the 2016 Act are (a) the conduct of both parties, (b) the financial resources of the landlord, and (c) whether the landlord had been convicted of any offences listed in s40(3). Upper Tribunal Judge Elizabeth Cooke expressly confirmed that the reasoning in *Parker v Waller* [2012] UKUT 301 (LC) does not apply under the Housing and Planning Act 2016 regime. The Landlord's net profit is therefore not the starting point [15], although at [16] Judge Cooke confirmed that any payment made by the Landlord for utilities could be deducted.
46. In this case the Respondent does not pay anything towards the utilities under the terms of the agreement. For the reasons set out above at [30] the Respondent is not required to pay council tax. It was also common ground that Mrs Hooley had not been convicted of an offence in relation to any of the matters set out in s40(3).

*Conduct of the Respondent*

47. Turning first to the conduct of the Respondent, the Applicant makes no allegations against Mrs Hooley save that she failed to obtain a licence before renting out the property. Clearly this is an offence for which she could have been prosecuted. Parliament has intended a punitive system for those who fail to comply with the licencing requirements established to improve housing conditions, and we have given this significant weight.
48. However, the Tribunal accepts that Mrs Hooley is not a professional landlady and this was her first experience of letting out a property. The Tribunal also accepts that she was genuinely unaware of the licencing requirements and took immediate steps to obtain a licence once she became aware in February 2020.
49. The Tribunal finds that the Respondent was naïve and despite having spent considerable sums renovating the Property ready for rental foolishly failed to obtain any advice prior to entering into an agreement

with Ms Awad. The terms of the tenancy agreement were unusual (for example the 10 year tenancy term and the express agreement for the tenant to reside at the property for one year after Mrs Hooley's death), and Mrs Hooley did not take a deposit, all of which are indicative of an inexperienced individual.

50. The Tribunal finds that Mrs Hooley entered into that agreement in part because she is a sympathetic person who understands the difficulties of the private rental sector. She has experienced homelessness herself, and felt sorry for the Applicant and her children and for Ms Lisa Drury who had been the victim of domestic violence. We also find there were cordial relations between the Appellant and Respondent from 2017 until their relationship soured in or around July 2019, and it appears Ms Awad has no complaints regarding Ms Hooley.
51. The Tribunal also accepts that tenancy was granted to the Applicant in somewhat '*chaotic*' circumstances. It seems Ms Awad wished to move urgently from 16 Wellington Road before the renovation works were completed on 14 Wellington Road. Although the Respondent alleges this rush was because the Applicant was being evicted, no evidence has been produced corroborating this allegation and we have given it no weight.
52. The Tribunal finds that Mrs Hooley failed to take action that most professional landlords would have in relation to the mounting rent arrears accrued by a tenant. Despite attempting to reach agreement for repayment of the arrears (including accommodating Ms Awad's request to pay weekly rather than monthly), those attempts failed. The Tribunal finds that when the Respondent belatedly attempted to take action by applying for possession on the basis of the mounting rent arrears (found by the Judge to be £8,118.08 in January 2020 (R:67)) that attempt ultimately failed due to defects in service of the notice seeking possession (under s8 Housing Act 1996). Had she obtained proper advice she would probably have obtained possession, thereby preventing further arrears from accruing.
53. The Tribunal finds that Mrs Hooley promptly acknowledged her error in failing to apply for a licence, and took action. The council wrote to her on 10<sup>th</sup> February 2020 (A:19) presumably having been alerted by the Applicant's solicitors on 6<sup>th</sup> February (A:16). The Respondent immediately took action. Her application for a licence was made on 12<sup>th</sup> February and the proposed licence was issued on 3<sup>rd</sup> March 2020 (R:21).
54. On balance, the Tribunal finds the Respondent a well-meaning and naïve landlady who foolishly failed to obtain advice about her legal obligations, in consequence of which she failed to comply with the Council's selective licencing requirements. She had tried to befriend and assist her tenant (and others living with the Applicant), has tried to provide a decent home and to comply with her repairing obligations but was ineffectual in her management of the tenancy. The Tribunal finds there to be no adverse conduct on the part of the Respondent over and above her

failure to obtain a licence and EPC prior to letting the property in June 2017.

*The Tenant's conduct*

55. Mrs Hooley makes various allegations regarding the Applicant's conduct. In summary she says Ms Awad;
- (i) failed to pay the rent on time and in full and accrued substantial rent arrears (nearly £10,000 by the date of the application).
  - (ii) sublet rooms to foreign students illegally
  - (iii) kept a dog at the property in breach of the tenancy agreement
  - (iv) ran a catering business from the premises
  - (v) failed to report items of disrepair (in particular the roof) which will result in substantial additional costs to repair the damage.
  - (vi) failed to allow access to the contractors engaged by the Respondent to inspect or carry out works.
56. Having considered the totality of the evidence, the Tribunal is satisfied that Ms Awad has never paid the rent on time in full for her occupation of 14 Wellington Road. The Tribunal accepts that Ms Awad is a person with limited means who has been reliant for at least some of the period of her tenancy on means tested benefits and this has impacted on her ability to pay the rent. The Tribunal also accepts that payments of Housing Benefit and the housing cost element of Universal Credit may well not have covered her full rental liability.
57. However, the Tribunal gave particular weight to the fact that Ms Awad only personally made one payment of £100 in the six-month period from 12<sup>th</sup> June 2017 and 11<sup>th</sup> January 2018. Although the Tribunal accepts that she may well not have known the exact amount that she would be required to pay once her housing benefit entitlement had been assessed, we found it more likely than not that Ms Awad would have been fully aware (from renting 16 Wellington Road) that her Housing Benefit award would not cover the rent in full. She should, therefore, have been making additional top up payments to prevent rent arrears accruing, but failed to do so for a six-month period.
58. The Tribunal also finds that although Ms Awad did attempt to make regular payments towards the rent between about January 2018 and May 2019, she never cleared the outstanding arrears.
59. Most damaging is her failure to make a single payment towards her rental liability between 11<sup>th</sup> July 2019 and the date of the hearing. Ms Awad admits as much in her witness statement, but fails to apologise or provide any explanation for this default (A:2). The only payments that

were made in that 12-month period were three direct payments of the housing cost element of Universal Credit (totalling £2,404.83).

60. While it may well be that Ms Awad is affected by the 'benefit cap', as she told the Tribunal, she has had the opportunity to provide evidence of this to us but has failed to do so. She failed to respond to the Tribunal's request of 8<sup>th</sup> July 2020 for information about her housing benefit award and has failed to comply directions given by the Tribunal at the conclusion of the hearing to provide evidence regarding both her housing benefit and her universal credit. She is represented by solicitors who we are satisfied are well aware of sources of advice about benefits, yet there is no evidence the Applicant has attempted to seek advice, or has applied for discretionary housing payments to which she might be entitled.
61. The Tribunal finds the Applicant's failure to pay any rent since July 2019 to be a deliberate, persistent and very substantial breach of the terms of the tenancy agreement following the souring of relations between the parties in July 2019. This default has resulted in the rent arrears increasing very significantly. The Tribunal finds that as at the date of the hearing of this application, Mrs Awad owed the Respondent a total of £15,538.32 for the six-bedroom property she occupies with her family. She appears to have taken no proper steps to seek advice, to maximise her income or reduce her indebtedness and to have taken advantage of the Respondent's inexperience. The Tribunal has given this very significant weight when considering the Applicant's conduct.
62. In relation to the other allegations made by the Respondent, the Tribunal finds they are either not made out or are of limited weight.
63. In relation to Mrs Hooley's allegation that the Applicant was running a catering business from the property, the Tribunal excluded the evidence Mr Taylor sought to adduce by email during the course of the hearing allegedly proving the same. It was clear from his cross-examination of Ms Awad that he was relying on evidence from Facebook that had not been previously disclosed either to the Tribunal or Mrs Hooley. Although the Tribunal accepts that Mr Taylor had only been instructed shortly before the hearing, we were satisfied that he was in possession of that evidence before he began to question the Applicant, and would have had sufficient time to disclose the Facebook screenshots and other evidence in advance of the hearing, and could have made an application for its late admission, but he did not.
64. When looking at the evidence as a whole the Tribunal finds that Ms Awad had tried to run an event from the Owl and Pussycat Public House on a Thursday evening for a short period, which included the provision of food, some of which she prepared at 14 Wellington Road. Mrs Hooley admitted she had personally helped Ms Awad to carry bags of pre-prepared salad and other food from the house. The Tribunal were not satisfied this amounted to evidence the Applicant was running of a business from the premises in breach of the tenancy agreement.

65. In relation to the allegation that the Applicant was taking in foreign students, the Respondent was clearly aware of the situation but raised no objections at the time (R:6).
66. As regards the allegation that Mrs Awad had a dog in breach of the agreement, Mrs Hooley only says she saw a dog on one occasion. As Mrs Hooley had been a regular visitor to 14 Wellington Road until relationships turned sour in July 2019 we found it was more likely than not she would have been aware of the presence of a dog if it had been there on a permanent basis.
67. Similarly, in relation to allegations regarding the state of the premises, the Tribunal was not satisfied these were made out. There is no supporting evidence to substantiate Mrs Hooley's allegation of significant disrepair. Although she has provided some photographs (R:70 to 74) these do not clearly show disrepair. Whilst we accept parts of the Property might have been messy and cluttered in January 2020, Mrs Hooley had previously been a frequent visitor to the property and did not appear to have had any concerns about its state until relations between the parties turned sour.
68. The Tribunal did, however, give some weight to the supporting evidence corroborating the Respondent's allegation that the Applicant has been obstructive in relation to her attempts to arrange appointments for inspections in relation to her legal obligations (R:75 to 85). Ms Awad was clearly aware of the Respondent's failure to obtain an EPC (having taken legal advice), yet she failed to respond to requests to allow an electrician entry to the property to carry out an assessment, and cancelled pre-arranged visits which resulted in cancellation fees being payable by the Respondent.

#### *The financial circumstances of the Respondent*

69. The Respondent says her only income is the rent she receives from the Property, as she is not entitled to her state pension until she is 66 (in 2021). We accept that evidence. That is clearly what she told Ms Awad before these proceedings were contemplated (R:48), and we found no reason to doubt her assertion. None of the bank statements disclosed showed any income apart from the credits transferred by the Applicant and other occupiers or from the Council.

#### *Conclusions*

70. Having considered these matters in the round the Tribunal considers that although the Respondent has committed an offence under s95 Housing Act 2004 by failing to obtain a licence before letting her home to Ms Awad, the amount of the maximum rent repayment that could be ordered should be reduced by 75%. This is to reflect the Applicant's continued, persistent, deliberate and very significant breach of the terms of the tenancy as regards payment of rent and her obstructive behaviour in preventing the Respondent from carrying out inspections.

71. Accordingly the rent to be repaid by the Respondent to the Applicant amounts to £849.18.
72. In relation to the Application and Hearing Fees sought by the Applicant the Tribunal dismisses her application as no fees were payable. Her application for fee remission was accepted.

Judge R Cooper

**5 August 2020**

**Note: Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

**APPENDIX 1**

The following are relevant excerpts from the legislation referred to in this decision

**Housing and Planning Act 2016**

**40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
  - (a) repay an amount of rent paid by a tenant, or
  - (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.

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<u>Criminal Law Act 1977</u>	section 6(1)	violence for securing entry
2	<u>Protection from Eviction Act 1977</u>	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	<u>Housing Act 2004</u>	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

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

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

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

- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
- (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **43 Making of rent repayment order**

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

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



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

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

#### **44 Amount of order: tenants**

(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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

**APPENDIX 2**

<b>DATE</b>	<b>RENT DUE</b>	<b>AMOUNT PAID</b>	<b>ARREARS</b>	<b>PAID BY TENANT</b>	<b>HOUSING BENEFIT PAYMENTS</b>	<b>CHELSEA A</b>	<b>LISA DRURY</b>
<b>10/06/17</b>	£1,200.00		£1,200.00				
23/06/17		£100.00	£1,100.00	£100.00			
<b>10/07/17</b>	£1,200.00		£2,300.00				
<b>10/08/17</b>	£1,200.00		£3,500.00				
<b>10/09/17</b>	£1,200.00		£4,700.00				
02/10/17		£238.54	£4,461.46		£238.54		
<b>10/10/17</b>	£1,200.00		£5,661.46				
20/10/17		£1,565.14	£4,096.32		£1,565.14		
<b>10/11/17</b>	£1,200.00		£5,296.32				
30/11/17		£390.00	£4,906.32				£390.00
01/12/17		£556.91	£4,349.41		£556.91		
<b>10/12/17</b>	£1,200.00		£5,549.41				
13/12/17		£305.00	£5,244.41			£305.00	
15/12/17		£477.25	£4,767.16		£477.25		
22/12/17		£517.08	£4,250.08		£517.08		
<b>10/01/18</b>	£1,200.00		£5,450.08				
11/01/18		£650.00	£4,800.08	£650.00			
22/01/18		£507.08	£4,293.00		£507.08		
26/01/18		£20.00	£4,273.00		£20.00		
26/01/18		£2,055.00	£2,218.00		£2,055.00		
31/01/18		£381.80	£1,836.20				£381.80
<b>10/02/18</b>	£1,200.00		£3,036.20				
10/02/18		£305.00	£2,731.20	£305.00			
19/02/18		£557.08	£2,174.12		£557.08		
28/02/18		£381.80	£1,792.32				£381.80
<b>10/03/18</b>	£1,200.00		£2,687.32				
13/03/18		£305.00	£2,130.24			£305.00	
19/03/18		£557.08	£1,748.44		£557.08		
30/03/18		£381.80	£1,748.44				£381.80
<b>10/04/18</b>	£1,200.00		£2,948.44				
11/04/18		£305.00	£2,643.44			£305.00	
16/04/18		£509.29	£2,134.15		£509.29		
<b>10/05/18</b>	£1,200.00		£3,334.15				
14/05/18		£467.88	£2,866.27		£467.88		
14/05/18		£305.00	£2,561.27			£305.00	
15/05/18		£45.00	£2,516.27	£45.00			
08/06/18		£305.00	£2,211.27			£305.00	
<b>10/06/18</b>	£1,200.00		£3,411.27				
11/06/18		£467.88	£2,943.39		£467.88		
19/06/18		£200.00	£2,743.39	£200.00			
19/06/18		£200.00	£2,543.39	£200.00			

09/07/18		£467.88	£2,075.51		£467.88
<b>10/07/18</b>	£1,200.00		£3,275.51		
11/07/18		£400.00	£2,875.51	£400.00	
06/08/18		£467.88	£2,407.63		£467.88
<b>10/08/18</b>	£1,200.00		£3,607.63		
10/08/18		£305.00	£3,302.63	£305.00	
14/08/18		£358.00	£2,944.63	£358.00	
03/09/18		£467.88	£2,476.75		£467.88
<b>10/09/18</b>	£1,200.00		£3,676.75		
11/09/18		£305.00	£3,371.75		£305.00
12/09/18		£200.00	£3,171.75	£200.00	
01/10/18		£294.96	£2,876.79		£294.96
<b>10/10/18</b>	£1,200.00		£4,076.79		
10/10/18		£305.00	£3,771.79		£305.00
11/10/18		£200.00	£3,571.79	£200.00	
29/10/18		£237.32	£3,334.47		£237.32
30/10/18		£150.00	£3,184.47	£150.00	
<b>10/11/18</b>	£1,200.00		£4,384.47		
10/11/18		£305.00	£4,079.47	£305.00	
13/11/18		£150.00	£3,929.47	£150.00	
16/11/18		£90.56	£3,838.91		£90.56
20/11/18		£189.04	£3,649.87	£189.04	
26/11/18		£327.88	£3,321.99		£327.88
27/11/18		£189.04	<b>£3,132.95</b>	£189.04	
04/12/18		£189.04	£2,943.91	£189.04	
<b>10/12/18</b>	£1,200.00		£4,143.91		
11/12/18		£405.00	£3,738.91	£405.00	
21/12/18		£327.88	£3,411.03		£327.88
<b>10/01/19</b>	£1,200.00		£4,611.03		
11/01/19		£455.00	£4,156.03	£455.00	
21/01/19		£327.88	£3,828.15		£327.88
26/01/19		£150.00	£3,678.15	£150.00	
29/01/19		£150.00	£3,528.15	£150.00	
05/02/19		£150.00	£3,378.15	£150.00	
<b>10/02/19</b>	£1,200.00		£4,578.15		
11/02/19		£305.00	£4,273.15	£305.00	
12/02/19		£150.00	£4,123.15	£150.00	
19/02/19		£150.00	£3,973.15	£150.00	
26/02/19		£150.00	£3,823.15	£150.00	
05/03/19		£150.00	£3,673.15	£150.00	
08/03/19		£450.00	£3,223.15	£450.00	
<b>10/03/19</b>	£1,200.00		£4,423.15		
12/03/19		£150.00	£4,273.15	£150.00	
18/03/19		£300.00	£3,973.15	£300.00	
23/03/19		£150.00	£3,823.15	£150.00	
02/04/19		£150.00	£3,673.15	£150.00	
09/04/19		£150.00	£3,523.15	£150.00	
<b>10/04/19</b>	£1,200.00		£4,723.15		
11/04/19		£755.00	£3,968.15	£755.00	

17/04/19		£150.00	£3,818.15	£150.00			
30/04/19		£150.00	£3,668.15	£150.00			
<b>10/05/19</b>	£1,200.00		£4,868.15				
10/05/19		£500.00	£4,368.15	£500.00			
14/05/19		£150.00	£4,218.15	£150.00			
21/05/19		£300.00	£3,918.15	£300.00			
30/05/19		£300.00	£3,618.15	£300.00			
<b>10/06/19</b>	£1,200.00		£4,818.15				
10/06/19		£455.00	£4,363.15	£455.00			
25/06/19		£400.00	£3,963.15	£400.00			
<b>10/07/19</b>	£1,200.00		£5,163.15				
11/07/19		£420.00	£4,743.15	£420.00			
<b>10/08/19</b>	£1,200.00		£5,943.15				
<b>10/09/19</b>	£1,200.00		£7,143.15				
<b>10/10/19</b>	£1,200.00		£8,343.15				
<b>10/11/19</b>	£1,200.00		£9,543.15				
<b>10/12/19</b>	£1,200.00		£10,743.15				
08/01/20		£801.61	£9,941.54	£801.61			
<b>10/01/20</b>	£1,200.00		£11,141.54				
07/02/20		£801.61	£10,339.93	£801.61			
<b>10/02/20</b>	£1,200.00		£11,539.93				
06/03/20		£801.61	£10,738.32	£801.61			
<b>10/03/20</b>	£1,200.00		£11,938.32				
<b>10/04/20</b>	£1,200.00		£13,138.32				
<b>10/05/20</b>	£1,200.00		£14,338.32				
<b>10/06/20</b>	£1,200.00		£15,538.32				
09/07/20	£44,400.00	£28,861.68	£15,538.32		HEARING DATE		
<b>10/07/20</b>	£1,200.00		£16,738.32				
	£45,600.00	£28,861.68	£16,738.32	£13,684.95	£11,506.33	£2,135.00	£1,535.40

£28,861.68