

**Neutral Citation Number: [2025] UKUT 161 (LC)**

**Case No: LC-2024-792**

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**

**AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPRETY CHAMBER)**

**Ref: LON/OOAN/HMF/2024/2011**

**Royal Courts of Justice, Strand,**

 **London, WC2A 2LL**

**4 June 2025**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***HOUSING – RENT REPAYMENT ORDER – jurisdiction – licensing offence – whether application made within time – whether offence committed in “the period of 12 months ending with the day on which the application is made” – reasonable excuse – whether proper assessment of defence made and adequate reasons given for rejecting excuse – s.41(2)(b), Housing and Planning Act 2016 – appeal allowed***

**BETWEEN:**

**STEVAN GORGIEVSKI**

**Appellant -and-**

**CARL GRIFFITHS (1)**

**JOSHUA SQUIRES (2)**

**MATTHEW FARRELL (3)**

**ROSS KERSLAKE (4)**

**WILLIAM CHURCHILL (5)**

**Respondents**

**4 Biscay Road, London W6**

 **Martin Rodger KC,**

**Deputy Chamber President**

**8 May 2025**

*Howard Lederman*, instructed directly, for the appellant

*Peter Eliot* of Justice for Tenants*,* for the respondents

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The following cases are referred to in this decision:

*Aly v Aly* [1984] 1 WLR 936

*Camden Borough Council v ADC Estates Ltd* (1990) 61 P & CR 48

*Jevan v Athansiadi* [2024] UKUT 358

*Marigold v Wells* [2023] UKUT 33 (LC)

*Moh v Rimal Properties Ltd* [2024] UKUT 324 (LC)

# Introduction

1. In this case the First-tier Tribunal, Property Chamber (the FTT) made rent repayment orders in favour of the five respondents requiring their former landlord, Mr Gorgievski, to repay to them rent totalling £33,668 which they had paid to him while they were tenants of his unlicensed HMO in West London.
2. The first issue in the appeal is whether the application submitted to the FTT on behalf of the respondents was made a day late, so that the FTT did not have jurisdiction to make any rent repayment order. The other substantial issue is whether in its decision of 3 September 2024 the FTT dealt sufficiently with the defence of reasonable excuse relied on by the appellant. There are other issues but they will only arise if the appeal fails on the two main issues I have identified.
3. At the hearing of the appeal the appellant was represented by Howard Lederman and the respondents by Peter Eliot of the advocacy organisation, Justice for Tenants. Neither of them had appeared before the FTT and I am grateful to them for their assistance.

# Legal background

1. Part 2 of the Housing Act 2004 provides for the licensing of houses in multiple occupation (HMOs). By section 72(1) it is an offence to manage or to be in control of an HMO that requires a licence and is not licensed. By section 72(4), it is a defence that, at the material time, an application for a licence had been duly made in respect of the house and had not yet been refused or withdrawn (or, if it had been refused, was still the subject or potentially the subject of an appeal). By section 72(5), it is also a defence that the person in question had a reasonable excuse for having control of or managing the house in those circumstances.
2. Chapter 4 of Part 2 of the Housing and Planning Act 2016 confers power on the FTT to make a rent repayment order where a landlord has committed an offence to which the Chapter applies. The offence under section 72(1), 2004 Act is one of those listed in section 40 of the 2016 Act as an offence to which the Chapter applies.
3. Section 41(2)(b) of the 2016 Act provides that a tenant may only apply for a rent repayment order if:

“…(b) the offence was committed in the period of 12 months ending with the day on which the application is made.”

1. In *Moh v Rimal Properties Ltd* [2024] UKUT 324 (LC), which was decided after the decision of the FTT in this case, the Tribunal (Judge Cooke) determined two issues of importance in this appeal. The Tribunal decided that in section 41(2)(b), 2016 Act:
	1. the “12 months ending with the day on which the application is made” is a period which ends with, and includes the whole of, the day on which the application for a rent repayment order is made; and
	2. no offence under section 72(1), 2004 Act is committed by the landlord of an unlicensed HMO on the day on which an application for a licence is duly made.
2. In reaching the first of those conclusions the Tribunal decided that on the proper construction of section 41(2)(b), the corresponding date rule does not apply. The corresponding date rule is the general rule of interpretation that where a contract or a statute requires that something be done within a certain number of months, the period ends on the day of the appropriate subsequent month that bears the same number as the day of the earlier month on which the period begins. In *Moh*, at [38], Judge Cooke explained why the corresponding date rule does not apply to section 41(2)(b):

“A period of 12 months ending on a particular date is not the same – as a

matter of ordinary language – as the period of 12 months before that date. The language implies that the start and end date are each within the period. It therefore starts not on 4 May 2022, whose beginning is more than 12 months away from any point during 4 May 2023, but at the first moment of 5 May 2022. I agree that what was said in *Lester v Garland* has been treated as a general rule and that Parliament is to be taken to be aware of the corresponding date rule derived from *Lester v Garland* and stated in *Dodds v Walker*; but had Parliament wanted that rule to apply it would have used the language with which that rule is associated, by specifying a period “after” or

“before” or “within so many months of” another event.”

1. In *Jevan v Athansiadi* [2024] UKUT 358, which was decided after the decision of the FTT in this case, I decided that an application had been made to the FTT on the day on which it was filed on-line by being sent in an email. I followed a dictum of Eveleigh LJ in *Aly v Aly* [1984] 1 WLR 936that making an application is a unilateral act which does not depend on steps taken by someone else. Nor did it depend on the requisite fee being paid at the same time as the application was sent.

# Factual background

1. 4 Biscay Road is a large house belonging to the appellant and his wife and was their family home from 1993 to 2000. According to the appellant’s evidence to the FTT, in 2000 the family moved out and he let the house to Shepherds Bush Housing Association until 2011. By 2011 he was living in Greece and later in North Macedonia and when his arrangement with the Housing Association came to an end, he relied on the services of local agents in London to let and manage the house on his behalf.
2. With effect from 5 June 2017 the London Borough of Hammersmith and Fulham (the Council) designated the area in which the property is situated under section 56 of the 2004 Act as an area of additional licensing of HMOs.
3. It appears from information supplied by the Council in 2024 that someone began to complete an online application for an HMO licence on 29 June 2018, but got no further than inputting an email address and obtaining a reference number. The email address associated with the application was the appellant’s. As no details of the property were provided, no HMO licence was issued at that stage.
4. In July 2018 the appellant was approached by a new agency, Kingsman, with whom he entered into a detailed management agreement under which Kingsman was to let and manage the house from 16 August 2018 and was to pay the appellant a fixed monthly rent.
5. It was an express term of the agreement that Kingsman was immediately to apply for any licence which was required to operate the property as an HMO. The appellant agreed to pay all monthly payments due under the mortgage on the property, and by clause 2.2.2.2, he agreed “to cover all costs required for the HMO licence to be approved, if the first application is rejected due to the Mortgage terms (for the avoidance of doubt all council requests and invoices will be provided by the Manager as proof prior to payment)”. I take that obligation to mean that Kingsman was to cover the costs of an HMO licence, but that the appellant was to be responsible for those costs if a second application was necessary because the first was rejected because of the terms of the mortgage on the property.
6. The agreement between the appellant and Kingsman was due to last for a minimum period of 12 months and then to be terminable on six months’ notice, but by August 2019 Kingsman was in liquidation. The appellant says that when it ceased trading Kingsman owed him £17,000 in unpaid rent. Its director was later disqualified for 11 years, having been found to have taken £6.7m from its clients in four years of trading.
7. After the collapse of Kingsman, which occurred while the appellant was living abroad, he began managing the property himself, relying on a friend, Leslie Nurse, as his local agent and keeping in touch with his tenants using group messaging apps. During the covid pandemic the appellant was prevented from leaving North Macedonia. It was at this time, between June 2021 and March 2022, that the five respondents separately became tenants of individual rooms in the property. The relationship between the parties began to deteriorate in September 2022 and the appellant eventually gave his tenants notice to leave. Each of them did so between February and May 2023.
8. It is the appellant’s case that when he let rooms in the property to the respondents, he believed it had been licensed by Kingsman. He explained in his FTT witness statement why he believed that. His agreement with Kingsman had required it to obtain a licence and he said that there were signs at the property which suggested that a licence was in place, including a framed document on the wall next to the entrance which looked to him like an HMO licence. He also said that the property appeared on the Council’s online list of properties for which HMO licences had been applied for. He saw it there and discussed it with Mr Williams of the Council in November 2022. He was informed by the Council on 29 November, after he had made enquiries, that following a review, the application “has now been closed”.
9. On being told by the Council on 29 November 2022 that the property was not licensed and that the application on its website had now been closed, the appellant immediately applied for an HMO licence, and was granted one in his own name on 5 July 2023.

# The FTT’s decision

1. The respondents’ application for rent repayment orders was sent by email to the FTT after close of business on 27 November 2023. When a copy was served on the appellant by the FTT’s staff he was informed that it had been received on 28 November, although the email filing the application was recorded as having been sent at 23.37 the previous night.
2. The application was considered by the FTT at a hearing at which it received lengthy written and oral evidence from four of the five tenants, from the appellant and from Lesley

Nurse. The FTT dealt with this evidence concisely in its decision published on 3 September 2024. It referred to Mr Farrell’s evidence that Lesley Nurse had become hostile towards the end of his occupation - “She occupied the living room being deliberately obstructive” - and that some items of disrepair at the property had remained unresolved. Two of the tenants, Mr Griffiths and Mr Squires, had referred to a “mice infestation” which took some time for the appellant to deal with. Mr Squires also said that there had been “random visits” from the appellant and his housekeeper, and that she “would spend several hours in the lounge”. The only reference in the decision to anything which either the appellant or Lesley Nurse had told the FTT was that he owned two other properties, one of which he let out.

1. The main body of the FTT’s decision comprised an account of the law relating to HMO licensing and rent repayment orders, including reference to five of this Tribunal’s decisions. That account did not mention the statutory defence of reasonable excuse or any of the authorities which consider it.
2. The FTT’s substantive determination was comprised in two paragraphs, which were separated by a calculation of the rent which the respondents had paid; the substantive paragraphs are as follows:

“Determination

34. In this case there was no dispute that the premises were unlicensed when they should have been. The Respondent sought to argue that his previous agents (Kingsman) had failed to tell him to get a license when they were managing the property. At the time of the Applicants’ occupation however the premises were being managed by the Respondent because Kingsman had gone into liquidation. We do not find the Respondent’s account credible and even if it was the onus was on him to determine if the property needed a licence. The conduct of the landlord overall was poor. There were problems of disrepair and infestation, the occupation of the lounge by him and the housekeeper was a form of harassment. The conduct of the tenants was generally good.

…

38. The failure to license offence is serious but not as serious as other offences such as unlawful eviction. Nonetheless we do take into account the landlord’s poor conduct as indicated above. We also take into account the fact that the Respondent has no previous convictions as far as we are aware. We consider that an award of 80% of the rental value is appropriate in this case.”

1. The awards to the five tenants varied between £6,353 and £7,768 and totalled £33,668. The FTT also directed that the appellant to reimburse the application and hearing fees which the respondents had paid, totalling £700.

# The grounds of appeal

1. The issues raised by the five grounds of appeal for which this Tribunal granted permission can be summarised as follows:
	1. Did the FTT lack jurisdiction to make a rent repayment order because the offence was committed outside the period of 12 months ending with the day on which the application was made?
	2. Did the FTT misunderstand the appellant’s reasonable excuse defence and wrongly reject it?
	3. Was the FTT’s finding that the use of the lounge by the appellant and Lesley Nurse amounted to “harassment” wrong in law and procedurally unfair?
	4. Was the FTT’s assessment of the quantum of the award flawed because it failed to take any of the matters relied on by the appellant into account?
	5. Was the FTT’s order for reimbursement of fees flawed because it did not take account of the respondents’ failure to engage with the appellant’s offer of mediation?

**Issue 1: Was the application made in time?**

1. The appellant’s application for permission to appeal relied on the information provided by the FTT’s staff when they served the application on the appellant, which was that the application had been received by the FTT on 28 November 2023. The FTT made no finding about the date on which the application was made, but it now appears that it had before it a copy of the email to which the application was attached. That shows, as Mr Lederman accepted, that the application was sent on 27 November 2023 at 23.37.
2. The FTT was not asked to determine the question now raised, which has only come into focus as a result of the Tribunal’s decision in *Moh v Rimal Properties*. As the issue is an issue of law which does not depend on any disputed issue of fact, and as it goes to the jurisdiction of the FTT to make the rent repayment order, it was appropriate that permission to appeal be given.
3. Section 41(2)(b) of the 2016 Act provides that a tenant may only apply for a rent repayment order if the offence was committed “in the period of 12 months ending with the day on which the application is made”. On the basis of the Tribunal’s decision in *Moh v Rimal Properties* the relevant period of 12 months ended on 27 November 2023, and included the whole of that day. The first day of the 12 month period was 28 November 2022. The appellant made an application for an HMO licence on 29 November 2022, and he was therefore committing no offence on that day, but (subject to his defence of reasonable excuse) he had been committing an offence on the previous day, 28 November. As that was the first day of the period of 12 months ending on 27 November 2023 the application will have been made in time if the view which I took in *Jevan v Athansiadi* is correct, namely that an application is “made” for the purpose of section 41(2)(b) when it is sent electronically and not when it arrives or is opened or processed by the tribunal.
4. For the appellant, Mr Lederman said that he would like to reserve his position on whether *Moh v Rimal Properties* was correctly decided. The case which he had intended to advance when he drafted the grounds of appeal fell away when the date on which the application had been sent to the FTT became clear (if the application had been made on 28 November, as the FTT’s staff originally implied, the application would have been a day late).
5. Mr Lederman based his case on jurisdiction on the proposition that the FTT could not be satisfied that an offence of being in control of or managing an unlicensed HMO contrary to section 72 of the Housing Act 2004 had been committed if, by the time the application was made, it was too late for a prosecution for the offence to be brought in the Magistrates Court. By section 127 of the Magistrates Courts Act 1980 an information or complaint alleging that offence had to be laid within six months from the time the offence was committed. Mr Lederman submitted that after the expiry of those six months it was too late to base an application for a rent repayment order on the same offence. I do not accept that submission. There is no support for it in the 2016 Act, and the express time limit in section 41(2)(b) is strongly against it. The expiry of a statutory limitation period does not rewrite the past or undo an offence which has already been committed, and a rent repayment order can be made despite there no longer being any possibility of a prosecution being brought for a relevant housing offence.
6. Mr Lederman also took issue with the Tribunal’s conclusion in *Jevan v Athansiadi* that an application was made when it was sent electronically. He referred to the decision of the Court of Appeal in *Camden Borough Council v ADC Estates Ltd* (1990) 61 P & CR 48 in which an application for planning permission was found to have been made not on the day on which it was put in the post, but only when it was received by the appropriate local planning authority. But there is no evidence in this case of when the email was received, nor was the FTT asked to consider that question. Mr Lederman suggested that an email sent after normal office hours should not be treated as having been received until the commencement of normal office hours on the following working day. I do not accept that submission, which appears to be unprincipled, and which would make statutory time limits dependent on the administrative arrangements of a particular recipient. If receipt is necessary before an application is made, I can see no good reason to treat the moment of receipt, whatever the hour of day, as the relevant point in time. In this case the only evidence is of the date the email was sent and in the absence of evidence to the contrary, that should also be taken as the date of receipt. On that basis the application was made within time.
7. I am therefore satisfied that the FTT did have jurisdiction to make a rent repayment order and that the appellant’s first ground of appeal fails.

# Issue 2: The appellant’s reasonable excuse defence

1. I can take this ground of appeal quite shortly. At paragraph 17 above I have identified the facts on which the appellant relied in his statement of case and his witness statement as providing him with a defence to the suggested offence. In short, his case was that he reasonably believed the property was already licensed. It was no part of his pleaded case that Kingsman had failed to tell him to get a license when they were managing the property. I do not accept Mr Eliot’s submission on behalf of the respondents that the

FTT’s description of the defence was poorly phrased but not substantially inaccurate. It is clear that the FTT did not properly consider the defence on which the appellant relied. Had it done so it would have been necessary for it to make findings of fact about what had appeared on the Council’s website (and it was clear from the Council’s own correspondence that there was something relevant on its website, otherwise there would have been no reason to say on 29 November that it “has now been closed”. It would also have been necessary for the FTT to deal with the appellant’s evidence, which it did not refer to, about a notice which appeared to the appellant to be an HMO licence hanging on the wall inside the property.

1. In *Marigold v Wells* [2023] UKUT 33 (LC), at [48], borrowing from the approach taken by tax tribunals, I suggested that a property tribunal considering a defence of reasonable excuse might usefully ask itself three questions, which were, in summary: what facts were relied on as amounting to a reasonable excuse; which of those facts were proven; and whether, viewed objectively, the proven facts provided an objectively reasonable excuse for the conduct of the appellant, taking into account their experience and other relevant characteristics. It is for each panel to make of that suggestion what it will, but the first step at least is essential, and in this case it was missing.
2. I am satisfied that, if proven, the facts relied on by the appellant were capable of being accepted as a reasonable excuse. As the necessary findings of fact were not made, the FTT’s decision must be set aside, and the appeal remitted to a differently constituted panel for redetermination.

# Issues 3 and 4: “Harassment” and the assessment of quantum

1. It is apparent from the proportion of the rent awarded (80%, which is unusually high for a licensing offence) that the FTT’s assessment must have been significantly influenced by conduct issues. Yet it dealt with these in a single sentence: “There were problems of disrepair and infestation, the occupation of the lounge by him and the housekeeper was a form of harassment”. It did not address the appellant’s case that necessary repairs were dealt with promptly. Nor did it explain why the presence of mice counted against the appellant, rather than against the respondents who were living in the property (on the appellant’s case, in considerable squalor). Nor did it make relevant findings to support its reliance on “harassment” (which had not been specifically alleged) as an aggravating factor.
2. When determining the amount of a rent repayment order, a tribunal would in principle be entitled to take into account conduct of a landlord which it was satisfied had been intended to intimidate a tenant. In this case, however, the FTT made no such finding and limited its reference to the evidence to Mr Farrell’s complaint that Lesley Nurse “occupied the living room being deliberately obstructive” and Mr Squires’ that there had been “random visits” by the appellant and Ms Nurse, and that she would spend several hours in the lounge. It referred to no evidence that the appellant himself had spent time in the lounge, nor did it suggest that any allegation of improper conduct or harassment had been put to him or to Ms Nurse (who had reason to be regularly in the property as she was employed as a cleaner).
3. The FTT also overlooked the fact that both the appellant and, with his permission, Ms Nurse, were entitled to be in the lounge. The respondents’ tenancy agreements were each for the occupation of a single room with the right to use the kitchen, bathroom and garden. None of the respondents was granted rights over the whole house and none of them was granted express rights to use the lounge. The tenancy agreement made it clear that the use of shared areas was to be with such others as the landlord might permit and the only parts of the building which the landlord was required to give notice before entering were the individual bedrooms (which were identified as “the property”). The appellant was therefore entitled to be in the lounge and a finding of “harassment” could only properly be made on some additional basis.
4. Had the FTT’s finding of harassment been the only ground of appeal I would have set aside its determination of the amount to be repaid. But as I have already set the decision aside in full it is not necessary to deal further with the quantum of the award.

# Issue 5 – Relevance of offer of mediation

1. The FTT ordered the appellant to reimburse the tribunal fees incurred by the respondents. He complains that in making that order the FTT took no account of the fact that he had offered to engage in mediation (at the suggestion of the FTT) but the respondents had not reciprocated. When this was pointed out to the FTT in the application for permission to appeal it said (wrongly) that mediation had not been raised, and that if it had been, it would not have affected the panel’s decision to order reimbursement of fees.
2. As I am setting aside the FTT’s decision it is not necessary to deal with this ground in any detail. I make only two points. First, the resolution of appropriate disputes by mediation should be encouraged, and a genuine offer of mediation which is not accepted is therefore a matter which can properly be taken into account when the FTT determines an application for reimbursement of fees. Secondly, a decision to order reimbursement of fees is a judicial decision which must be taken fairly; fairness requires that the unsuccessful respondent be given the opportunity (either at the hearing or after, but in any event before the decision is made) to make any points they wish to in answer to an application for reimbursement.

# Disposal

41. For these reasons, and as I have already indicated, the appeal is allowed and the FTT’s decision (including its decision on reimbursement of fees) is set aside. The application for rent repayment orders is remitted to a differently constituted panel for redetermination. The parties should consider whether the mediation service offered by the FTT might allow them to reach an earlier and more proportionate resolution of the application.

Martin Rodger KC,

Deputy Chamber President

4 June 2025

**Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal’s decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.