FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BE/HMF/2019/0003**
Property	**:**	**Apartment 2307, One The Elephant, 1 St Gabriel Walk, London SE1 6FD**
Applicants	**:**	**Marco Nicosia (1), Constance Tooher (2), Friedemann Lammel (3) and Marianne Fobel (4)**
Representative	**:**	**Mr Alasdair MacLenahan of Justice for Tenants**
Respondent	**:**	**Christophor Miess**
Representative	**:**	**Mr Gordon Menzies of Counsel and Mr Bhawsar, Paralegal**
Type of Application	**:**	**Application by a tenant for a rent repayment order under section 41(1) and (2) of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Tribunal Judge Dutton Mr J F Barlow FRICS Tribunal Judge Evans**
Date and venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 8th May 2019**
Date of Decision	**:**	**31st May 2019**

DECISION

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DECISION

The Tribunal determines that the Respondent should pay the sum of £10,000 by way of a rent repayment order in respect of the Applicants' claim, such sum to be payable at the rate of £2,500 per month commencing on 15th June 2019 and thereafter on the 1st of each month from 1st July 2019.

BACKGROUND

1. On the 2nd April 2019 the Applicants named on the front page of this decision applied to the Tribunal for a rent repayment order against the Respondent in respect of the Applicants' occupancy of the property at Apartment 2307, One The Elephant, 1 St Gabriel Walk, London SE1 6FD (the Property). The application is made under section 41 of the Housing and Planning Act 2016 (the 2016 Act), the allegation being that the Applicants had control of or managed an unlicensed HMO contrary to section 72(1) of the Housing Act 2004 (the 2004 Act). This constituted an offence under section 40(3) of the 2016 Act.

2. The allegation in the application was that the London Borough of Southwark had designated their area as one that required additional licensing, which came into force on 1st January 2016 and covered the Property, which was a self-contained flat within the definition of an HMO and for that purpose a licence should have been obtained. It is said that a rent repayment order is sought in the sum of £30,646 payable for the period from 4th September 2017 to 31st July 2018 being the commencement of the tenancy to the time when the Applicants vacated the Property. Prior to the hearing we were provided with an indexed bundle of evidence relied upon by the Applicants running to some 120 pages. In response the Respondent Mr Miess produced his bundle containing a detailed witness statement, copies of the tenancy agreements, the Respondent's submissions prepared by Mr Menzies of counsel and finally a bundle of legal material which was relied upon including four case reports, which we will refer to as necessary in due course.

3. This bundle of documentation from Mr Miess resulted in the Applicants filing an additional bundle which included their response to the witness statement and the financial circumstances as well as to the Respondent's submission. There are also a number of exhibits annexed, which again we will refer to as and when necessary.

4. We did not inspect the subject Property.

5. Just before the start of the hearing we were provided with a further bundle of papers. This included a letter before action relating to the allegation that Mr Miess had failed to protect the tenancy deposit and alleging an offence under section 213 of the 2004 Act. The bundle also contained correspondence from Corp Zap, the tax returns, albeit in German, although with some translation by Mr Miess, as well as further documents concerning the ownership of the Property and in particular a Declaration of Trust between Mr Meiss and his father.

6. The Applicants had no objection to the late submission of these papers by the Respondent.

HEARING

7. At the commencement of the hearing we were able to obtain confirmation from Mr Menzies on behalf of Mr Miess that
(a) there was no dispute as to the amount of the rent which had been paid and which was being claimed, save that it was disputed that such amounts were due by way of refund
(b) there was no dispute that the Property required licensing and
(c) there was no dispute that an offence had been committed save that Mr Menzies said that Mr Miess had a reasonable excuse pursuant to section 72(5) of the 2004 Act.

8. It is the Applicants' case that they contacted Justice for Tenants initially to recover their deposit of £7,000 which had been paid to the Respondent at the commencement of the letting. It appears that when they requested the return of their deposit it came to their attention that this had not been secured as was required by legislation. The Respondent did subsequently secure the deposit and this led to an adjudication where an award was made requiring a repayment of £6,355.55 to the Applicants out of a sum of £6,575 which the Respondent had endeavoured to retain. It was as the result of these concerns in respect of the deposit that further investigation was undertaken, which led them to discover that the Respondent had failed to license what was now an HMO. The Applicants sought the recovery of the rent that they paid from the time they took occupancy to the time that they vacated, which was from 4th September 2017 to 31st July 2018 although the tenancy, a copy of which is within the papers, in fact ran to the end of August.

9. The Applicants contend that at all times their conduct had been exemplary and that the Respondent had in fact caused suffering and his conduct had been poor, more aimed however at the circumstances surrounding the deposit. Within the initial bundle from the Applicants was the adjudicator's decision and some First-Tier Tribunal decisions.

10. The Respondent filed a witness statement dated 12th April 2019 in response to the application. This witness statement told us that he had bought the flat off plan but did not have sufficient financial resources to fund the purchase without buying it with his father. It appears that presently his father owns 69% of the Property with the balance being held by the Respondent. In the papers that were delivered to us just before the hearing was a copy of a Declaration of Trust dated 29th July 2016 indicating that initially the father owned 99.9% of the equity in the Property but that this had been varied so that the intention was that the father's share would reduce to 68.75%. Certain covenants are given in this declaration, particularly by the Respondent to indemnify his father and enabling him to receive the rental income which we were told was used in part to defray borrowing that his father that arranged by way of bridging finance, details of which appeared amongst these papers.

11. The statement went on to tell us that he had initially found two students to move into the flat for 12 months from 1st September 2016 and in March of 2017 and started looking for further tenants as he knew that the existing ones would be departing in August of 2017. He was contacted by Mr Nicosia who indicated an interest in renting the flat with his girlfriend Miss Tooher. Emails were exchanged it is said and terms of a tenancy were agreed with a rental of £2,786 per month. In the papers before us at page 39 as an exhibit to Mr Miess's witness statement is a copy of an AST agreement showing Mr Nicosia and Miss Tooher as being the tenants with the agreement dated 28th March 2017 but occupancy not to begin until 1st September 2017. This agreement contained reference to a deposit of £10,000.

12. What then seems to have happened, and there is some dispute as to who prompted this, is that Mr Nicosia indicated that he and his girlfriend would wish to have other tenants share the occupancy of the Property to make the rent more affordable for them. It is said by Mr Miess that this was solely Mr Nicosia's suggestion but he made no objection. Two further tenants were found, Miss Fobel and Mr Lammel, and it appears that they were added to the agreement by handwritten additions, which appear to have been signed on 28th April 2017, one month after Mr Nicosia and Miss Tooher had signed. The agreement is signed by Mr Miess.

13. An email was produced dated 2nd May 2017 from Mr Lammel which refers to meeting with the Respondent and Mr Nicosia and Miss Tooher when signatures were added to the contract confirming that it was now intended that the letting should be to the four people. The deposit which was originally £10,000 was reduced to £7,000 and the keys would be handed over on 1st September 2017. It appears, however, that Mr Nicosia and Miss Tooher moved in on 4th September and Mr Friedmann and Miss Fobel on 12th September.

14. Mr Miess accepted that he should have applied for a license from the London Borough of Southwark as the Property was now shared by more than three people who did not form part of a single household. However, and this forms the basis upon which he says he has a reasonable excuse, it was he said never his intention that this should have occurred. It was only because Mr Nicosia asked if two others could be added and that he wanted to help them, that the situation arose. Mr Miess's witness statement said that he would have preferred there to have been two rather than four people as it would reduce wear and tear. He confirmed that in his view the Applicants had enjoyed living at the Property until they decided to leave and indeed prior to them leaving had assisted the Respondent in finding alternative tenants.

15. At the conclusion of the tenancy, a professional inventory company was asked to inspect and they produced a report, which was relied upon by Mr Miess in seeking to retain a substantial part of the deposit that had been paid. It is accepted by the Respondent that he had not secured the deposit as he should have done. He did however do so as soon as this was made clear to him and this in turn invoked the adjudication process which resulted in the Applicants recovering the vast bulk of the £7,000 deposit which had been held by the Respondent. Indeed, the Applicants had threatened the Respondent with Court proceedings for not dealing with the deposit and had written a letter before action

to that effect. It is accepted, however, that the deposit has now been repaid in accordance with the adjudicator's findings.

16. His witness statement went on the deal with his financial circumstances which we will return to in due course.

17. We then considered the Respondent's submissions. The submissions indicate that the Respondent denies the offence under section 72(1) of the Act (erroneously referred to as the Housing Act 1972) had occurred. The allegations of suffering on the part of the Applicants were denied and it was drawn to our attention that no witness statement containing a statement of truth had been adduced at that time. The submission went on to indicate that it was a defence to the offence under section 72(1) that there was a reasonable excuse and that the Tribunal must be satisfied beyond reasonable doubt that an offence had been committed. It was said that if a defence of reasonable excuse was raised it was for the 'prosecution', in this case the Applicants, to disprove same, and we were referred to the case of the *City of Westminster v Mavroghenis* a case from 1984.

18. We were then referred to other authorities relating to the purpose of the legislation and it was said that there was no question that the premises were unsuitable for the occupation of two couples and that during the tenancy itself there appeared to be no issues of conduct on the part of the Respondent.

19. It was said that the statute was not designed to provide a windfall for tenants. The "striking thing" in this case so it was said on behalf of the Respondent, was that the tenants had taken the initiative in proposing, finding and arranging for other people to come and live at the Property which was only to their advantages. In fact, it was to Mr Miess's disadvantage that there were more people staying at the Property than had originally been his intention. Further, it is said that there was a reasonable excuse because at all times the Respondent had a reasonable and honest (if mistaken belief) that he had done all that he needed and in this regard we were referred to the case of the *London Borough of Haringey v Goremsandu.*

20. The submission went on to address the alleged suffering by the Respondent's failure to follow the law and that there had been no suffering as a result of Mr Miess's failure to license.

21. This statement elicited a response from the Applicants, which was set out in their second bundle. Emails produced by the Applicants, they say, clearly show the Respondent was aware that there would be four tenants from the beginning and that he had raised no issue in this regard. Furthermore, it is said on the part of the Applicants that it was not their responsibility to inform the Respondent of his legal obligations. It is said that the Respondent was happy to have additional tenants as this made payment of the rent more likely and that the circumstances evidencing the additional tenants occurred some five months or more before the tenancy started. The statement in response then goes on to deal with the issues arising from the lack of securing the deposit. The Applicants accept that there is no connection between the handling of the deposit and the failure to license but it does show that the Respondent had failed to comply with legal requirements,

which went to his conduct. It is also said that the Respondent had been aggressive, unapologetic and bullying although denied by him.

22. The Respondent's financial circumstances were then examined by the Applicants and we have noted all that has been said in that regard. The statement then went on to deal with a response to the Respondent's submissions, again which we noted.

HEARING

23. At the hearing the Applicants' case first addressed the question of the deposit which as we indicated above prompted the Applicants to investigate the matter and then they discovered that a licensing offence had been committed.

24. Insofar that as the conduct is concerned, the Applicants say there was no disrepair and any items that needed to be dealt with were handled appropriately. Indeed, there is no real argument that either parties' conduct was an issue during the currency of the tenancy. It was only relating to the deposit where the conduct of the Respondent is alleged to have fallen below an acceptable level, particularly as a result of his failure to secure the deposit and an attempt to claim an excessive amount by way of repayment.

25. Mr Menzies on behalf of the Respondent drew our attention to the submissions made repeating the allegation that it was the tenants who took the initiative in this case. He submitted that the application was based on conduct in regard to the deposit and that there was no connection between the failure to obtain a licence and the deposit. It was said that the Respondent never intended to have two extra tenants and he did this only to assist the Applicants, as he would not be getting extra money. There was, Mr Menzies said, no evidence produced by the Applicants to support their claim. We had to be satisfied that an offence had been committed and that in this case he had a reasonable excuse which therefore gave him a defence. The defence is that the Applicants asked to add tenants, which he agreed and thus meant that there was a lawful excuse for not having the license. It was the actions of another which led Mr Miess into this liability.

26. We then heard from Mr Miess who relied on his witness statement. We were told that the tenants vacated the Property on 31st July 2018 and it was not until 6th August 2018 that Mr Miess discovered the need to lodge the deposit. This he did immediately and began getting estimates with regard to the works of repair and reparation to his flat in August.

27. He was asked about his financial circumstances which are dealt with in some detail in his statement. Much of this was produced in the papers provided on the day of the Hearing.

28. A letter from Corp Zap dated 7th May 2019 speaks to the company Iconic Partners PTE Limited of which Mr Miess is said to the guiding light. This letter is from a corporate secretarial firm engaged by Iconic confirming that to the best of their knowledge the company made no profit in 2018 and has no subsidiaries or parent companies. A copy of the Respondent's tax return was included which he had translated showing that his source of income for taxable purposes in Austria was

just under 12,000 Euros. There were no tax returns for the income earned in the United Kingdom but we were told that that was confined to the rental income from the Property. There were no tax returns in respect of the Iconic company, which appears to be based in Singapore.

29. He told us that he had not been able to get a mortgage in the United Kingdom as his earnings were insufficient. Apparently, he had been working for Goldman Sachs but they had let him go. The money for the purchase of the Property had been secured against his father's property in Austria and the rental income is used in part to discharge the bank loan that his father had entered into.

30. It was suggested that he appeared on the Forbes under 30s list although he did tell us that you have to apply for membership. It is correct that he was a member of the Digital Advisory Board for the Austrian Government but that was pro bono work and that the total of his income was as disclosed on the documents before us.

31. Asked about the arrangements for the letting of the Property, he told us that it was the Applicants who asked for two extra people to be added to the tenancy agreement. He thought that this would help the tenants by allowing them extra people to pay the rent. He was satisfied that the Applicants were professional people and would, therefore, fulfil their obligations. He was content for there to be extra tenants at the Property as there was more likelihood that the rent would be paid and there would be no void periods. It was drawn to his attention that the tenancy agreements appeared to show differing levels of deposit but he confirmed that he had agreed to accept the lower deposit of £7,000. It was also drawn to his attention that the tenancy agreement contained at paragraph 4.1.15 on both copies reference to the Housing Act 2004 and occupation as houses of multiple occupancy. This appeared to be aimed at tenants who without the agreement of the landlord moved additional people into the Property, which might result in it becoming an HMO.

32. He was also asked about the inclusion of 'Service Charges' as a liability for the tenants, within the tenancy agreement. At clause 4.1.2 reference is made to the tenants being responsible for the annual service charge for the Property. The annual service charge for the period of the Applicants' occupancy at page 27 of his bundle appeared to amount of £3,600.36.

33. Asked how he had determined the rent levels, he said he had carried out research before the first letting and was charging the same level of rent as he had charged previously subject to a 2% uplift.

34. When the Applicants indicated they wished to leave early he said he had been disappointed but the Applicants had assisted in finding new tenants and there were emails to that effect.

35. We were told that the tenancy agreement had been one that he had received from an agent which he had amended to include the service charge provisions and which included a break clause. It was this break clause that the Applicants put into effect to leave a month early.

36. He was satisfied that there had been a good relationship between himself and the Applicants. He did not classify himself as an overseas landlord and had been in the United Kingdom when the Property was purchased and there throughout although there may have been times when he was in Austria.

37. He was asked by the Applicants when the question had been raised about another couple joining in. He confirmed that this had been early on but that it had been for his benefit as well as he thought it would ensure the rent would be paid and that there would be a little or no chance of void periods. Email exchanges showed that there was an agreement that two extra tenants should occupy the Property. However, he was adamant that it was the Applicants who brought up the topic of extra people occupying the Property. By way of explanation of the two differing copies of the tenancy agreements on the file, it appears that one party completed one copy of the agreement and the other the corresponding part.

38. At the conclusion of the evidence Mr Menzies made certain submissions. He submitted that the Applicants had not disproved the defence of reasonable excuse. There was no causal link between the breach of the law and the sums claimed nor the conduct relied upon. Finally, he submitted that the financial circumstances needed to be taken into account.

39. Elaborating on these points his submission was that the reasonable excuse was that it was the tenants who had control of the tenancy. This is evidenced by the meeting in March of 2017 when the agreement was signed by only Mr Nicosia and Miss Tooher. Subsequently the other signatures were added and this was at the behest of the Applicants. There was no condition imposed by the Respondent that there had to be four people living there. The Respondent went along with the additional tenants as it benefitted the Applicants although there were certain benefits for the Respondent. In his submission the circumstances were sufficient to raise the defence of reasonable excuse and having done so it was for the Applicants to disprove this, which they were not able to do. Insofar as conduct was concerned, the only allegation of conduct arose after the tenancy had ended although it was during the time for which the deposit had to be repaid. However, it Mr Menzies' submission this was not conduct that we needed to take into account.

40. In relation to the financial circumstances, we had evidence of the Respondent's financial situation. It was, Mr Menzies said, clear that the Respondent could not afford to buy the flat without his father's assistance. The tax return showed limited income. There appeared to be no income derived from the company in Singapore and in the United Kingdom the only income was derived from the rental of the Property. He asked the question what suffering had been caused to the Applicants by the failure to obtain a license.

41. In response, the Applicants submitted through Mr MacLenahan that licensing requirements were imposed for various reasons. It was to ensure that the standard of property was maintained and he pointed out that this was not a prosecution. It was a tenant making a claim for various issues under the terms of the 2004 and 2016 Acts. There was nothing in the 2016 Act which sets out any standard of behaviour or the level of the repayment. The conduct and financial circumstances of the landlord need to be considered and there was no suggestion

that tenants had acted in anything other than an exemplary fashion. On behalf of the landlord, it was said by the Applicants that he had failed to serve the prescribed information and to protect the tenancy deposit, did not have a licence and was not apologetic.

42. An application for reimbursement of the fees of £300 was made. It was suggested that an attempt to mediate had been put forward but this did not occur. Mr Menzies had no comment to make on the fees considering that they would follow the event.

THE LAW

43. The law applicable to this matter is set out in the appendix attached.

FINDINGS

44. Section 72(1) of the Housing Act 2004 states as follows: *"A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this act (see section 61(1) but is not so licensed."* The Act goes on to say at section 72(5) "*in proceedings against a person for an offence under sub-section 1(2) or (3) it is a defence that he had a reasonable excuse –*

a. *For having control of managing the house and the circumstances mentioned in sub-section 1 (or)*
b. *For permitting the person to occupy the house (or)*
c. *For failing to comply with the conditions."*

45. Mr Menzies' submission to us was that in effect if a defence of reasonable excuse is raised the Respondent is not required to go any further than that. The burden, he said, then shifts to the Applicants to disprove any defence. In this case the reasonable excuse is that the Respondent was asked by Mr Nicosia to allow two further tenants to occupy the Property, which meant there were four people living in the flat and thus it became an HMO. The cause of this was solely down to the Applicants in asking the Respondent to allow additional people to occupy the Property.

46. With respect to Mr Menzies, we do not accept his submission in this regard. It was accepted at the outset of the hearing that there was no dispute as to the amount of rent that had been paid, that there was no dispute that the Property required licensing and that there was no dispute an offence had been committed save that the defence of reasonable excuse existed.

47. What is the reasonable excuse? During the course of the hearing Mr Menzies likened the case that were dealing with to a criminal matter before the criminal courts, perhaps for example possession of a knife or drugs. In this case there is an admission that an offence under section 72(1) and possibly section 72(2) had been committed. The defence is that there is a reasonable excuse and we have heard all that is put forward in that regard. Mr Miess was the landlord in charge of the Property, he was not obliged to let Mr Nicosia or Miss Tooher add additional tenants. Indeed, they had already signed the tenancy agreement before the other tenants were added. The tenancy agreement clearly refers to

HMOs and it should therefore have been within his contemplation that this might have created an offence under the 2004 Act. He may not have been aware that the Property became an HMO because in the London Borough of Southwark there was a compulsory licensing scheme for properties of this nature. That, however, in our finding is not a reasonable excuse. He was the landlord and could, indeed should have refused the extra occupancy. He may have agreed for altruistic reasons although he did derive some benefit in the additional security for rent. However ignorance of the law is no excuse and in becoming a landlord for gain he should have ensured that he was fully aware of the legislation affecting the Property. It is not, in our finding, sufficient to in effect say that the tenants asked him to do this so he has no liability. We therefore find that he is liable to a Rent Repayment Order.

48. It does not seem to us, and we so find, that the conduct surrounding the deposit is a matter that we need to consider in connection with the conduct as is provided for at section 44(4)(a) of the 2016 Act. There is no allegation of misconduct on the part of either party during the currency of the tenancy agreement. We accept that a landlord/tenant relationship probably continues whilst the deposit is being resolved and the failure by Mr Miess to properly secure the deposit is further evidence of his ignorance of the law which, as we have indicated above, is no excuse.

49. The matter we need to consider is what level of rent repayment order. We bear in mind that the Applicants have had the use and occupation of a very pleasant luxury flat albeit for not insubstantial rental payments. There is no allegation of any conduct between the parties during the continuance of the tenancy agreement. We accept the imposition of a rent repayment order is not only to recompense the tenants for rent that they have paid and in instances to allow the local authority to recover housing benefit, but also as a deterrent to landlords who fail to comply with the legislation.

50. We have taken into account the financial circumstances of Mr Miess and accept his submission that he is not a man of great means. We suspect the entry into the Forbes list is a matter of some 'puff' and we accept his tax returns and the letter from his director in relation to the company in Singapore. Although he did not produce a copy of any tax returns from the UK, we are prepared to accept that this is limited to the rental income. It is noted that he was let go by Goldman Sachs and we accept, therefore, that his income from those resources no longer exists and what income he does have is somewhat limited. The purchase of the flat was only possible because his father was able to afford financial assistance. In those circumstances we take the view that an appropriate award would be the sum £10,000 to recompense the Applicants for some of the rent paid during the tenancy agreement and to reflect the Respondent's failure to licence the Property. This is to be paid by four monthly instalments of £2,500 commencing on 15th June and thereafter payable on the 1st of each month from 1st July 2019.

51. In addition, we order reimbursement of the application and hearing fee in the sum of £300 such sum to be paid within 28 days.

Andrew Dutton

Judge: A A Dutton

Date: 31st May 2019

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

The relevant Law - 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.

	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

(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).

41Application 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.

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.

47 Enforcement of rent repayment orders

(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.