FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00CJ/HMF/2019/0030**
Property	**:**	**140 Cardigan Terrace, Heaton, Newcastle Upon Tyne, NE6**
Applicant	**:**	**Miss Alice Bradbury**
Representative	**:**	
Respondent	**:**	**Miss Carolyn Crawford and Rachel Crawford**
Representative	**:**	
Type of application	**:**	**Section 41 (1) Housing and Planning Act: Rent Repayment Order**
Tribunal member(s)	**:**	**Judge L Bennett** **Judge J White**
Venue	**:**	**Northern residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2Piccadilly Plaza, Manchester, M1 4AH**
Date of decision	**:**	**22 August 2019**
Date of determination	**:**	**28 August 2019**

DECISION

The Decision

1. The Tribunal makes a rent repayment orders ('RRO') in the sum of £467 in favour of Alison Bradbury. The said sum is to be paid by 23 October 2019.

The Application

2. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 ("the Act") for a RRO in respect of 140 Cardigan Terrace, Heaton, Newcastle Upon Tyne, NE6 5HS ("the property").

3. The property is a 5-bedroom 2 story terrace house. The applicant was a tenant between 3 February 2018 and 19 January 2019. There was at least one resident landlord in occupation during the period of the tenancy. The rent paid was £550 per month.

4. On 28 June 2019, the Tribunal gave Directions. The purpose of such Directions is to identify the relevant issues that the Tribunal will need to consider to determine the application fairly and in a proportionate manner. Pursuant to these Directions:

   (i) The Applicant filed their Bundle of Documents. This included a written submission, the tenancy agreement, a statement from another former tenant, a letter from Newcastle City Council (NCC) and a bank statement showing rent paid. The Applicant claims a Rent Repayment Order (RRO) of £1390 being the total of rent paid for November, December and January (part month paid £290).

   (ii) On 26 July 2019, the Respondent filed their Bundle of Documents. This included written submission including a statement of expenses, statements from two tenants, correspondence with NCC and the applicant. They admit that a RRO is due but should be reduced to £130. They have calculated rent paid for the period as £913.33. they state the relevant period commenced on 29 November 2019 and agreed the end date as being 19 January 2019. They have deducted £141.06 for the Applicants share of the bills over 51 days. They claim that an additional £641.99 should be deducted for

additional charges incurred on top of the deposit of £450 already retained.

The Issues

5. The Application and Response raises the following issues:

(i) It is common ground that the Respondents failed to obtain a HMO licence as required in November 2018 until the date the applicant left on 19 January 2019. The exact date is in dispute and so is the maximum rent recoverable;

(ii) Both the Applicant and the Respondents raise some relatively minor conduct issues, the most important being the repayment of a deposit that was retained by the Respondent and other charges they have attributed to the Applicant, though had not pursued until the dispute about the deposit arose.

(iii) The Respondent also claims deductions for expenses for utilities, water and council tax.

(iv) The parties have requested a paper determination

6. The law in this area is complex. We annex the relevant statutory provisions to this decision.

The Findings

7. On the 23rd of January 2018 the Applicant, Miss Alice Bradbury, entered into a tenancy agreement with the Respondents, Miss Carolyn Crawford and Miss Rachel Crawford who are sisters and were resident landlords [4-6]. Alice Bradbury had exclusive possession of one room and shared with other occupiers facilities of common parts including the bathroom, toilet, kitchen and sitting room. This is confirmed by the agreement. The tenancy began on 3 February 2018 at a rent of £550 per month. There is a £10 per day penalty for late payment of rent.

8. The rent included household bills and council tax. In addition, Alice Bradbury paid a security deposit of £450 and there is no provision in the tenancy agreement for this to be protected. There is no legal requirement for it to be so.

9. The property is five bedrooms over two floors. At the start of the tenancy there was another tenant, Anna Murray, in occupation. At this time four out of the five bedrooms were occupied. The fifth being used as a storeroom. Carolyn Crawford and Rachel Crawford occupied two of the rooms.

10. On 1 April 2018 Anna Murray moved into the fifth bedroom. This was described as the dressing room. The rent paid was £410. She remains a tenant and on good terms with the Respondents [40]. On 3rd April 2018 Alice Bradbury moved from the double back bedroom into the front king bedroom at the same rent. On 15 July 2018 a new tenant Jade Latham moved into the double back bedroom. The rent paid was £475 a week. She moved out on 15 July 2019 and retains a good relationship with the landlords [39]. On 26 November 2018 Rachel Crawford, one of the resident landlords moved out and on 29 November 2018 Eleanor Gordon moved into the Property and room vacated by her. She had found it advertised on 'Spareroom' as a five-bedroom four-bathroom house. She had been told by the landlord Rachel Crawford that the property was licensed as an HMO. At this point it became a house subject to license.

11. Sometime in the autumn or winter of 2018 Alice Bradbury started complaining of dampness in her bedroom resulting in mould and condensation on the windows. Mould was affecting a mattress, clothes in the wardrobe and the external wall. The Landlords obtained a report from a damp specialist and informed Miss Bradbury that there were higher than usual humidity in her room; it was her fault as she dried all her clothes in the bedroom despite the presence of a tumble dryer in the Property. They bought a dehumidifier to be used in her bedroom. There was also said to be similar issues in the bedroom of Rachel Crawford.

12. There is a dispute about how far and when the relationships between the landlords and the applicant started to deteriorate. They continued to live in a shared house and participate in shared activists such as a leaving meal. Alice Bradbury decided to move out when she started an internship abroad as part of her PhD program.

13. On 18 December 2018 Alice Bradbury gave one months' notice to leave the Property. A leaving date of 19 January 2019 was agreed. The Respondents agreed to charge part rent for January, and they reached an agreement that rent liability for January would be limited to £290.

14. On 14 January 2019 Alice Bradbury made a complaint to NCC as she discovered that the Property was not registered as a licensed HMO. On 16 January 2019 Eleanor Gordon was given verbal notice to leave the property. On 18 January 2019 NCC carried out inspection at the date of inspection there was a BBC film crew in attendance. It is unclear who informed the BBC. They did not enter. The reasons for them not entering the property to film is disputed and unclear. We do not need to make a finding in relation to this.

15. On the same day Carolyn Crawford made a telephone call to Eleanor Gordon to inform her she had to move out as another tenant had made a complaint about her. On 19 January 2019 Alice Bradbury moved out.

It is agreed that there was no inspection at the time of departure, though it is disputed as to why this was so.

16. Alice Bradbury was informed that £420 of the £450 deposit would be retained because there was damage to the flooring in both bedrooms that she occupied. £30 was retained as the rent due on 3 December 2018 was paid on 5 December, so subject to a £10 per day late payment fee, and the Respondents had to clean out her room and a food cupboard. This was evidently disputed and on 27 March 2019 the Respondents wrote to her outlining the reasons for retaining the deposit together with other unclaimed charges they state they have incurred. They provided a detailed breakdown and included receipts and photos [55-64]. There is no other evidence in the bundle proving such damage or costs were incurred as a result of Alice Bradbury's actions or that the cost of work to the damage floor was necessary or proportionate to the scratch marks on the floor. The deposit has never been returned.

17. The Respondents have returned the deposits to Eleanor Gordon and Jade Latham for the full amount (bar £5).

18. On 1 April 2019 NCC wrote to Rachel Crawford alleging an offence as a result of a failure to licence from 18/1/19 (the date of inspection). She returned the completed questionnaire on 8/4/19 [34-35].

19. On 23 May 2019 NCC wrote to Alice Bradbury stating that "the landlord provided tenancy agreements for all the tenants which showed that the property was required to be licenced from November 2018" and their "initial investigations indicate that an offence of operating an HMO without a licence has taken place. The City Council are continuing to investigate this case"[2 Applicants].

20. It appears from an email dated 8 July 2019 that subsequently a civil penalty order for £651 had been made and that this was in the process of being disputed. We have no further evidence in relation to the penalty [97]. A civil penalty order is made instead of a criminal prosecution by the local authority.

Our Determination

The Offence

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

(i) On 29th November 2018 the property became an HMO falling within the definition falling within the "standard test" as defined by section 254(ii) of the 2004 Act. In particular:

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

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

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

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

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

(f) the households who occupy the living accommodation share the kitchen, a bathroom and a toilet.

(ii) The Respondent failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1). On 29 November 2019, the property was let to four tenants (with one resident landlord) without a licence. After 19 January 2019, when Alice Bradbury moved out, there is insufficient evidence in relation to whether a licence was required, though it appears that the Respondents decided to keep it outside the requirements for obtaining a licence.

(iii) The offence was committed over from period of 29 November 2018 to 19 January 2019.

(iv) The offence was committed in the period of 12 months ending on 17 June 2019, namely the date on which the application was made.

22. An inspection was carried out to the property on the 18th of January 2019 by NCC environmental health officer. During that visit she spoke to the tenants. The landlord provided tenancy agreements for all the tenants which showed that the property was required to be licensed from November 2018. There was no action known to be taken about the condition of the property. This is not disputed, and the Respondents do not claim reasonable excuse beyond lack of knowledge. We accept the Respondents case that the date the offence was committed from is 29 November. This is because it is the date where the fifth tenant moved

into the Property to replace Rachel Crawford. This is the only specific date given in the bundle and so is accepted.

23. If there is no conviction for a relevant offence the 2016 Act gives the Tribunal, a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. We are satisfied that Alice Bradbury was not in receipt of any state benefits and that she paid the rent from her own resources.

Maximum Payable

24. The RRO only relates to the rent paid during the period that the offence was committed. The period does not cover the whole of November. It is noted that the Respondents calculation of the maximum rent is £913.33. This is due to the way it has been calculated. The tribunal has calculated an annual rent of £6600 (£550 x 12). This has been divided into 365 days equalling £18.01 day. There are 5 days of rent from the 29th of November 2018 until the 2nd of December 2018 equalling £94.05. Rent paid for December is £550. The rent paid for January is £290. This totals £934. This is the maximum amount payable.

Amount Payable

25. In determining the amount payable under section 44 of the 2016 Act, the Tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence.

26. We first consider whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case. Though the correspondence in the Respondents bundles refer to a fine it also refers to a decision of the local authority. It is likely this a financial penalty. The power to impose a financial penalty is an alternative to prosecution and made in accordance with S126 and Schedule 9 of the 2004 Act. As there has been no conviction the Tribunal has discretion as to the amount taking into consideration the section 44 factors.

27. In determining the amount of any RRO, we also have had regard to the guidance given by the George Bartlett QC, the President of the Upper

Tribunal ("UT") in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the Housing Act 2004 where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than a nonprofessional landlord. Specifically, in relation to payment for utility services which forms part of the rent, his view was that these should not be ordered to be repaid except in the most serious cases as the landlord will not himself (or herself) have benefited from these.

28. Section 44 of the 2016 Act does not state that the amount repayable to an occupier should be such amount as the tribunal considers reasonable in the circumstances, but neither does it contain a presumption that the full amount will be repayable.

Conduct of the Landlords

29. This is not a case where there has been a deliberate and persistent failure on the part of the landlord. They are renting out rooms in their home and are not professional landlords. The breach occurred when one of the landlords moved out and rented her room on the 29th of November 2018. However as soon as they became aware that they were required to apply for a license they requested that the tenant Eleanor Gordon moved out so Rachel could return, thereby avoiding the need to become licensed. This can be seen in the statement of Eleonor Goulding and the response to the investigation. On 1 April 2019 NCC wrote to the Respondents stating that they were investigating the offence from 18/1/19 which is the date of inspection. It appears from page 37 of the Respondents bundle, an email from Carolyn Crawford to NCC, that they have been fined £651.34.[38]. They have requested training though have not applied for a licence. They are intending to keep the number of tenants of separate households below five. They don't have any other convictions for similar offences.

30. There are three other tenants and each of them have provided a statement; two being supportive of the landlord and one supports the tenant application. Though the statement of Jade Latham states that Eleonor Gordon was asked to move out due to her behaviour [39] there is no other evidence in relation to this, including from the Respondents. There is little pointing to the Respondents being poor landlords, beyond some relatively minor disputes. All parties had a meal out organised by the landlords prior to the inspection and the landlords did take action following complaints about the dampness. Alice Bradbury appeared to move out primarily due to going abroad for her PHD. However, there is some evidence of some retaliatory behaviour by the landlord, by asking one tenant to leave and retaining the full deposit as set out below, though by no means anywhere near the worst kind. As *Parker* set out the Act is to prevent retaliatory behaviour.

31. There was no requirement for the tenancy deposit to be protected as it was not an assured tenancy due to their being a resident landlord. Properties with resident landlords are not assured under schedule 1 of the Housing act 1988. There has thereby been no breach under the Act. However, a landlord is still required to only retain a deposit where they can establish charges incurred as a result of the tenants conduct and should not put them in a better position than prior to the start of the tenancy. As there were no pre or post tenancy checks, this could not be established.

The conduct of the tenant

32. The Respondents contend that Alice Bradbury behaved in a way to cause them out of pocket expenses that they have not previously deemed appropriate to reclaim from her. These are outlined in a letter to her in relation to retaining the deposit [51-64]. They are supported by receipts. This includes damage to a bed, mattress topper, kitchen cupboard door, flooring and dampness and consequential mould growth through untenantlike behaviour. They have not provided any other evidence substantiating their claim that these expenses are a result of the actions of Alice Bradbury. For example, they have not provided the report of the damp specialist, nor communication with her during the course of her tenancy. There is no pre and post inspection report or inventory. In fact, they contend that they reduced her rent liability at the end of the tenancy period. They accepted a months' notice that began on the date of the notice rather than the start of a tenancy period (i.e. 3rd of the month).

33. In relation to the deposit retained this relates to a ¼ cm dent in the floor where her chair indented in each of the rooms occupied during her tenancy. On 8 July 2017 the Respondents had paid £280 per bedroom to "sand, fill and varnish" floorboards that were said to be original. This

is supported by an invoice [54]. On 3/3/19 there is a further invoice Said to be for a full re-sand and varnish to the front and rear bedroom floors due to indentation and scuffs and scratches to the varnish and into the timber at a cost of £200 for bedroom one and £215 for bedroom two [55]. The photos purported to show evidence of the indents do you not reveal any significant scratching beyond wear and tear [56].

34. As a whole the evidence does not support significant poor conduct by Alice Bradbury.

Other factors including the financial circumstances of the landlord

35. The Respondents have already paid £641.99 to NCC, apparently in relation to the same facts. However, a RRO is to be made in addition to any other penalty or fine.

36. The Respondents claim that £141.06 should be deducted from the maximum amount in relation to the a fifth of bills paid for the period. This is set out at 42 and is supported by some evidence; though the amount wouldn't have been any less if it were not for the Applicant, so is still profit.

37. We note that the Act provides that the maximum amount that a landlord may be required to repay is the rent paid during the relevant period, less any state benefits. We are required to take into account "the financial circumstances of the landlord". The suggestion that it would not be appropriate to impose a RRO that exceeds the landlord's profit in the relevant period, is rather guidance provided by the UT in *Parker*. The UT gives such guidance as part of its role to promote consistent practice by First-tier Tribunals (see Carnwath LJ in *Earl of Cadogan v Sportelli* [2007] EWCA Civ 1042; [2008] 1 WLR 2142).

38. *Parker* only applies, in relation to deduction for expenses, where a landlord has not *benefited*. This will be where the landlord does not live on the same premises and so does not benefit from the use of utilities. As one of the landlords is a resident one, she has also benefited for payments of utilities and council tax. As this is a resident landlord case we will not make any deductions. Only one tenant out of the four has taken action. The Respondents will still have benefited from rent paid by the other tenants. The other charges claimed although they have been incurred it has not been made out that they are connected to the applicants conduct. We will not make any deductions for these charges.

Conclusion

39. Neither parties conduct has been particularly poor. There is some doubt over whether the Respondents deliberately failed to obtain a licence based on the comments made to Eleonor Gould, whether there was some retaliation for informing NCC including retaining the full deposit and whether it should all have been retained. Retaining a deposit without the necessary justification and evidence can have an impact on a tenant in relation to being able to afford a deposit on a future property. However, in general the landlords conduct cannot be described as poor. They addressed the damp issue promptly, retained relationships in the property as supported by two of the tenants, had an arguable case to retain some of the deposit and the offence is for a very short period of time when one of the Respondents moved out for work commitments. They are not professional landlords and are renting out rooms in their own home and sharing common parts with the tenants. There may have been some relatively minor poor tenant conduct by the applicant, though not particularly significant. The maximum RRO has consequently been reduced by 50%

40. Taking all relevant matters into account, we are satisfied that the RRO should be made in respect of 50% of the profit. We have computed this profit to be the rental of £934 received during the relevant period from the Applicant. 50% of this figure is £467.

Cost applications

41. There were no cost applications and we found no grounds to make an order for costs.

Judge J White
20 August 2019

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

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

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

Appendix of Relevant Legislation

Housing Act 2004 (the Act)

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,
(b) he knowingly permits another person to occupy the house, and (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

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

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018

This Order comes into force on 1st October 2018.

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.

Housing and Planning Act 2016 (the 2016 Act)

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to 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).

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 a 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 had 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 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 this 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 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.