FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/HMF/2019/0037**
Property	**:**	**Room 4.1 LEB Building, 255-279, Cambridge Heath Road, London E2 0EL**
Applicant	**:**	**Summer Oxley**
Representative	**:**	**Mr G Morris and M D Herm-Morris from Flat Justice Community Interest Company Limited**
Respondent	**:**	**Live In Guardians Limited**
Representative	**:**	**Mr Anthony Tanney – Counsel with Mr Aryeh Kramer solicitor with Waller Pollins Goldstein**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Tribunal Judge Dutton** **Mrs E Flint FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**28th November 2019**
Date of decision	**:**	**9th December 2019**

DECISION

DECISION

The tribunal determines that the applicant Summer Oxley is entitled to a Rent Repayment Order against the respondent, Live-in Guardians Limited in the sum of £4,937.40, payable within 28 days of the date of this decision. The reasons for our findings is set out below.

In addition, we order that the respondent do repay to the applicant the sum of £300 in respect of the fees paid to the tribunal. Such sum to also be paid within 28 days of the date of this decision.

Background

1. This was an application made by Ms Summer Oxley for a Rent Repayment Order (RRO) under the Housing and Planning Act 2016 (the HPA) The respondent is Live-in Guardians Limited and it related to the property room 4.1 at the LEB building, 255 – 279 Cambridge Heath Rd London E2 OEL (the Building) .

2. The Building is a former London Electricity Board property formerly comprising industrial offices now converted to multiple residential units for live -in guardians. The property spans 4 floors, with shared bathroom and kitchen facilities. The unit occupied by Ms Oxley and her partner Mr Burke was on the 4th floor.

3. Miss Oxley occupied under the terms of an agreement dated the 23rd of August 2018 made with Live-in Guardians Limited, the full terms and effects of which we shall refer to as necessary during the course of this decision.

4. Prior to the commencement of the hearing we were provided with three bundles of documents. Two were prepared by the applicant and one by the respondent. In addition, we were provided at the start of the hearing with a skeleton argument prepared by Mr Guy Morris on behalf of the applicant and a skeleton argument with the authorities prepared by Mr Tanney on behalf of the respondent. We have noted the contents of the bundles. In the first bundle prepared by the applicant she produced a copy of the application to the tribunal, the agreement, details of the rent payments made, and some emails passing between her and the respondent. Also, this first bundle contained a copy of the directions issued by the tribunal on the 19th August 2019 and correspondence between Flat Justice, of whom Mr Morris is a representative, and the tribunal.

5. In chronological order we then had before us the respondents bundle which contained a two page defence signed by Mr Duke, a director of the respondent company, a witness statement of Jonathan Moser, a Guardian manager, the Guardian Handbook and a draft copy of the agreement. In addition we were provided with financial details for Live-in Guardians Limited showing

expenditure in respect of the refurbishment of the Building and also an email from the City of London indicating that in respect of a property at 9 -10 Angel Court London EC2R 7HB, it being a commercial property, it would not be considered appropriate for permanent residential accommodation and accordingly a request for a temporary exemption notice was refused.

6. The applicant lodged a bundle headed "Reply to respondent bundle" which commented upon the evidence adduced by the respondents in their papers and gave further details of the case they proposed to make before us at the hearing. It was in effect a detailed at submission with a number of screenshots. We have noted all that has been said.

7. Included within this additional bundle was a letter of complaint to the tribunal concerning the respondent's failure to produce evidence of correspondence relating to a licence application in respect of the Building, which it was said had been made by the respondent on the 29th of July 2019. We were also provided with a joint witness statement from Ms Oxley and her partner Mr Burke and email exchanges passing between the respondent and Ms Oxley. The bundle also included what is referred to as a 'white paper' on the law of property guardianship prepared by some eminent lawyers including Andrew Arden QC. We have noted the contents and will as necessary refer to same during the course of this decision. Finally, in the bundle were further details concerning the financial status of the respondent.

Hearing

8. Before the commencement of the hearing we had the opportunity of reading the skeleton argument prepared by Mr Morris for the applicant and the skeleton argument submitted by Mr Tanney on behalf of the respondent.

9. Before the hearing got underway Mr Tanney sought an adjournment because the witness, Mr Moser was unwell. We were handed a letter from Dr. Wetzier indicating the reasons for Mr Moser's inability to attend the hearing. We were told that Mr Moser should be well enough in 4 weeks, although with no certainty. If he was unavailable at that time then it appeared that Mr Duke, who had prepared the defence would attend.

10. Mr Morris, for Ms Oxley, did not think that Mr Moser's attendance was crucial.

11. Having heard the submissions from Mr Tanney, reviewed the statement of Mr Moser and the comments from Mr Morris we came to the conclusion that we would not postpone the hearing. Our reasons for that decision were that there was no certainty that Mr Moser would recover in 4 weeks. Indeed, we were told that he had, that morning, been taken to hospital in an ambulance. The costs of an adjournment were disproportionate, given that both sides were present with representation and ready to proceed. Further the statement made by Mr Moser would still be considered and in truth it did not go to the

nub of the case. In fact, we considered that the evidence of Mr Duke would have been more helpful, but he was not called to stand in Mr Moser's shoes.

12. Mr Morris's skeleton argument was short and to the point. It described the Building and confirmed that in the opinion of the applicant an RRO could be made by licensees or tenants, as provided for at section 56 of the HPA. It also drew to our attention, despite the denial made by Mr Duke on behalf of the respondent in his witness statement, that an application for an HMO licence had been made although no correspondence relating to this was included within the bundle. Mr Morris indicated that it was a condition of occupancy that Ms Oxley resided at the property for five nights out of 7 and that it was her main residence. The skeleton went on to deal with other issues which do not seem to be of particular importance in connection with this application. It concluded with a request that we award the full 100% claimed by way of RRO together with the reimbursement of the tribunal fees paid by Ms Oxley, which were £300. The amount claimed by Ms Oxley in her application was £5744.86, being 6 months rent of £927 each month together with additional sums relating to a deposit and pre contract costs.

13. The skeleton argument prepared by Mr Tanney for the respondent contended that Ms Oxley was neither a tenant nor a licensee of the Building. The property was not an HMO and was not within the jurisdiction of the tribunal under the provisions of section 40 of the HPA. If, contrary to the respondent's submission, we considered we did have jurisdiction, then only a nominal sum should be ordered.

14. Under the heading 'Facts' Mr Tanney described the Building confirming that it consisted of a lockable living / bedrooms, formed by lightweight partitions for the sole occupation of individuals or couples, together with shared cooking, bathroom and storage facilities. There are 4 living/ bedroom units on each of the upper floors of the property together with one set of shared facilities per floor. It is accepted that Ms Oxley occupied room 4 .1 on the 4th floor of the building between 29th of August 2018 and 20th of February 2019. It was said on behalf of the respondents that they placed guardians in the property under contract with the building owner. The respondent has no property interest in the Building and at all times the respondent believed that the property retained its commercial character and thus an HMO licence could not be obtained.

15. The skeleton argument went on to address the jurisdiction point indicating that the building could not be an HMO unless it was occupied by tenants or licensees and further someone who is neither a tenant nor licensee cannot invoke the jurisdiction of HPA.

16. Reference was made to provisions of the agreement to which we will return and a number of authorities, which likewise we will address in due course. It was suggested that an inference by the applicant that the agreement may be

considered a sham was tantamount to alleging dishonesty, which should be specifically pleaded and proved by admissible evidence. In this case it was said that no such evidence existed.

17. It was said in the skeleton argument that the occupation of the building by Ms Oxley was a consequence of her contractual duty under the terms of the agreement. We noted the remainder of the skeleton argument and the issues under the heading 'Quantum issue'.

18. Mr Morris confirmed that Ms Oxley's case was that she was entitled to apply for an RRO and that most likely she was an AST tenant. He submitted that any occupant can apply for an RRO and that the guardianship companies where operating outside the area of control envisaged under the Housing Act 2004. He also submitted that the respondent had received legal advice which dealt with the issue of the renting of commercial properties. He posed the question that if we found that an RRO could not be made where did someone, such as Ms Oxley, go for recompense.

19. It was Ms Oxley's case that her occupancy was a tenancy and that she occupied the building as such and could make an RRO application It was drawn to our attention that the respondent had applied for an HMO licence on 29th July 2019 but no mention of this was made in the defence signed by Mr Duke which is dated the 29th October 2019.

20. It was believed by Mr Morris that the respondent now runs a number of properties of this nature and a number of people may be affected. It was, he said, an important case in that respect. On the financial details provided by the respondent he said it was not appropriate for all renovation costs to be included and that the conversion works consisted of single plasterboard walls and surface wiring. He addressed us on the impact of the UT case of Parker v Waller which he considered was now out of date bearing in mind the new legislation, which he said created an intention to 'crackdown' on rogue landlords.

21. We then heard from Ms Oxley who had provided a witness statement. We have noted all that is said. In evidence she told us that the rooms at the building were differently priced and there were 4 units on her floor. She said that she had never had any fire training and had not heard fire alarms being tested. She said that she was not shown where fire exits were situated nor where muster stations were positioned. She confirmed she was not aware of any emergency lighting and that as part of the initial fees she was required to purchase a fire blanket and a small fire extinguisher she thinks for around £65.

22. She was asked by Mr Morris why she left the building and told us that she had concerns about fire issues. She confirmed also that she had raised these issues

with the respondent. On the question of having to stay at the property for five nights out of 7 she confirmed that there was no signing in or signing out nor indeed any steps taken to ensure that she was present. The communal area was locked and she was provided with two keys, to the front door and to the floor of the communal area at her level. She mentioned also that she had endeavoured to obtain insurance cover for her possessions but was not able to do so because the Building was shared accommodation and the insurers were unable to evaluate the risk. She did accept that the level of rent charged was below the market rent, but her view was that the building was fully occupied and when occupants left it was quickly filled.

23. She confirmed that she had occupied three other properties under a Live Guardian scheme but they were not of the same nature as this Building. She told us that her letting had been terminated at the other properties as the buildings were to be re-generated. She did confirm that there have been 2 visits to her room one was before a re-letting and the other for a general inspection.

24. She confirmed that she had not seen an electrical safety certificate although had asked to see one but did confirm that there was relevant signage at the Building.

25. Mr Tanney stated that much of her evidence given at the hearing was not within her witness statement or was an expansion on that which she had said. Ms Oxley was referred to the terms of the agreement and confirmed that she had read it and signed it and it was her signature appended. Reference was made to the Guardian Handbook which is referred to in the agreement. Asked whether Mr Burke had signed she confirmed he had and that he had gone to the main office of the respondent in north London, with the signed agreement and collected the key. She told us that she worked at the Tate Gallery on a shift basis with variable start and finish times and provided a screenshot of the bank transactions indicating that £5744.86 had been paid including the sum of £182.86 for extra items. It was confirmed by Mr Tanney that the figures were not in dispute.

26. We then heard from Mr Tanney. The submissions were to some extent a repeat of that which was to be found in his skeleton argument. He referred to section 72 (1) and (5) of the Housing Act 2004 (2004 Act) as well as section 73(3) and that there was a reasonable excuse in respect of the offence which he intended to return to. It did not seem to be disputed that Ms Oxley utilised the room at the Building as her only and main residence. Accordingly, his submission was that s254 of the 2004 Act , “the standard test”, was met and that the only question was nature of the occupation by Ms Oxley. He contended that Ms Oxley was neither a tenant nor licensee but that she occupied to fulfil her duty to be present under the terms of the Agreement.

27. It was accepted that the respondents had not been convicted of an offence, there were no previous convictions on the part of the respondent, the period of

occupancy was not in dispute and he accepted that section 56 of the HPA did include a 'licence'.

28. He referred us to the terms of the Agreement and a number of the definitions contained therein including that relating to 'living space' and 'sleeping area'. It was, he said, a settled expectation that Ms Oxley and her partner would occupy room 4.1. The agreement provides that the guardians can change rooms amongst themselves provided they notify the respondent. He then drew our attention to the provisions setting out 'Serious Breaches' and other elements of the Agreement which he said supported his view that Ms Oxley was neither a tenant nor a licensee. His view was that there was no exclusive possession of the living space, the room having been allocated and in his opinion this was not a property dispute but a contractual one.

29. He referred us to a number of authorities which we have noted and will deal with under the Finding section in so far as we consider them relevant. His submission went on to deal with the approach to the consideration of legislation, relying on an extract from Bennion on Statutory Interpretation. The definition of license was to be found in the text book 'The Law of Real Property'. He drew to our attention, set out in both the Agreement and the Handbook an obligation on the part of a resident to stay at the property on a full-time basis. The effect he said was that Ms Oxley having signed the Agreement came under an obligation to go into occupation and to stay there. This was solely for the benefit of the respondent. There was a legal requirement to live at the property It was he said a personal contract which did not create a licence.

30. Briefly addressing the 'reasonable excuse' point he said that there was such a 'reasonable excuse' as evidenced by the respondent's enquiries of other local authorities, which indicated that the property for which the enquiry was made would not be one to which an HMO application could be made. However, this did not relate to the Building, was not a request made of this local authority and was only an application for Temporary Exemption Certificate.

31. Finally he addressed us on the question of quantum relying on the UT case of Parker v Waller which he considered still to be applied to the HPA . There were no financial details of items expended in respect utilities, we having heard from Ms Oxley that those were included within the rent she paid. He suggested a discount of 15% but had no evidence to support that allowance. His submission was that Ms Oxley knew what she was getting into. She had been a Guardian before. Because it was apparent that the Building might need an HMO licence he considered that Ms Oxley was now seeking to take advantage of this. This was he said a business model that helps all, a good thing and everyone is happy.

32. Mr Morris made brief submissions referring us to the cases of Ludgate House Limited v Rickets and others, a UT case on rating and County court case of

Camelot Property Management Limited and Camelot Guardian Management Limited v Roynon.

33. He reminded us that although the respondent had the right to ask residents to move Ms Oxley was never asked to do so and the terms of the Agreement were not necessarily outside the terms that one might find in an AST. In his view the principle concern should be the safety of the tenants which he said the respondents had failed to safeguard having regard to the fire safety and wiring issues.

FINDINGS

34. We have considered all that was said, both in the witness statements, statements of case and the Defence. We have considered the statement of Mr Moser and have given that such weight as we consider appropriate. We have also considered the skeleton arguments given to us by both Mr Morris and Mr Tanney. Various cases were cited. The judgment in the case of Camelot versus Roy and Roynon made certain findings at paragraph 34 and 35. The judgment off HHJ Ambrose dated the 24th of February 2017 was that Mr Roynon had exclusive possession of the rooms and that this created an assured shorthold tenancy.

35. The UT case of Ludgate House was a rating case and of limited assistance to us. It was found at paragraphs 98 to 100 of the judgment that the perspective of the licensees themselves was that the occupation provided them with somewhere to live. The clearest demonstration of the exclusivity of their occupation was the provision of a key to each licensee for their own room. The upshot of this case was that the district valuer was required to delete the composite entry for the property from the 2010 rating list and restoring it to the entries in existence before the re-rating. In effect therefore bringing it into council tax.

36. The authorities put to us by Mr Tanney were Street v Mountford, a House of Lords case in respect of exclusive occupation. That case held allowing the appeal that where residential accommodation had been granted for a term at a rent with exclusive possession, the grantor providing neither attendance nor services, legal consequence was the creation of a tenancy, and that, accordingly, on the true construction of the agreement between the parties notwithstanding the use of the word licence had the effect of creating a tenancy.

37. The case of Camelot Guardian Management Limited v Khoo held that the agreement granted the defendant the right to occupy the property as a whole, in common with other guardians and not a right to occupy a particular room; the fact that the defendant had been asked to occupy a particular room did not undermine the true nature of the agreement, which did not grant a right of exclusive possession; the claimant company was providing temporary security

for the property against vandals and trespass through providing guardians in circumstances where it was essential that possession could be returned to the owner at short notice; the agreement was not a pretence and granted the license rather than a tenancy.

38. The final case that we were referred to is a County court case between the respondents and Ms Olajuwon. In this case in oral submissions the defendant accepted that the agreement was as a pure matter of construction a mere licence not a tenancy, a concession which the judge held was quite properly made referring to the Camelot Guardian v Khoo case. It should be noted however, that at the conclusion of the judgment the following is said : *"I therefore find that the agreement did not grant the defendant a right of exclusive occupation in relation to room L G2 and that she was granted no more than a licence which came to an end on expiry of the notice on 13th of September 2018, since when the defendant had been occupying as a trespasser. Having reached that conclusion it is not necessary for me to consider or make any determination in relation to the amended aspect of the claimants particulars of claim relating to the situation should I have found that a tenancy had been created".*

39. We need to consider the terms of the Agreement which applies in this case. A copy of the signed Agreement was included within the applicant's evidence bundle. It contains an explanatory note under the heading 'License Agreement' and confirms that the agreement under which the respondent allows occupancy is a temporary licence sharing living space in a building. It goes on to say that the person in Ms Oxley's position would not get a right to exclusive occupation of any part of the living space, which will be shared with other individuals permitted by the respondents. At paragraph 5 of the explanatory note it says this, "*This sort of sharing arrangement does not create a tenancy. This means that you will have to vacate the building as soon as the agreement is terminated. If you do not vacate the building LIG will take legal action to remove you and will seek to recover the costs of that legal action from you".*

40. The Agreement is dated the 23rd August 2018 between the respondent and Ms Oxley. it refers to the address as 4.1, 255 - 279 Cambridge Heath Road London E2 0EL. Under definitions the 'Elected Sleeping Area' *means the room at the property in which the Guardian sleeps from time to time, as agreed between the guardians and notified in writing to LIG provided that the elected sleeping area at the start of the licensing (and until such time as the Guardian notifies LIG that the elected sleeping area has changed) will be the room confirmed to the Guardian by LIG under clause 3.7".* Clause 3.7 confirms that LIG will inform the guardian of the room s/he will be sleeping in.

41. At paragraph 1.8 living space means "*such part or parts of the property as LIG may from time to time designate as being available for shared use by the*

Guardian another guardians". Under the heading 'Background' at 2.2 it states "*the owner has given LIG permission to grant temporary, non-exclusive licences, to person selected by LIG to share occupation of such part or parts of the property as LIG may from time to time designate, on terms which do not confer any right to the exclusive possession of the property or any part of it"*.

42. The agreement goes on to deal with the licence fee and utilities and taxes as well as setting out administration charges and the provision of information. Under the heading 'The Guardian Will' it states at 10.1.1 use the living space as a place to live in and will not without LIG's prior written consent sleep away from the living space for more than 2 nights out of any consecutive 7 night. It goes on to state that LIG may in its absolute discretion give written consent for the Guardian to be away from the property for an extended period in exceptional circumstances.

43. There are then rules and obligations, health and safety guidance and termination provisions. The schedule and checklist appended to the agreement confirms a monthly licence fee of £927 together with safety pack fee of £65, holding deposit of £100 and an administration fee of £85. In addition to this document we were provided with a copy of the Guardian Handbook. This Handbook refers to the agreement as a non-exclusive license agreement setting out the rules and the responsibilities. It states that *"as a Guardian you pay a monthly licence fee and in return live in a shared property with other Guardians"*. It goes on to say that due to the contracts that live in guardians enter into with the property owners the length of stay cannot be guaranteed and that the Guardian would normally be requested to vacate within 28 days. The Handbook went on to deal with general safety tips as well as other matters relating to the occupancy of the building.

44. Mr Tanney in his submissions to us asked us to find that Ms Oxley was neither a tenant at nor a licensee but somebody occupying the property in effect on a term of employment. We accept that Ms Oxley is not a tenant. We find comfort in that decision by reference to the authorities is given to us by Mr Tanney.

45. However, we do not consider that this gives LIG the comfort it might seek. The Agreement that the respondent created, it must be remembered, refers to licensee throughout. As does the Handbook. In that the document the agreement is described as a non-exclusive Licence Agreement. The authorities to which we have been referred found that the person in Ms Oxley's shoes occupied as a licensee. We accept that she has no security of tenure, other than that set out in the Agreement. However, we do not consider that this removed the entitlement for Ms Oxley to apply for an RRO. The Agreement at clause 10 is unusual in that it requires the licensee to occupy the Building for 5 out of 7 days and that there should be at least one guardian at the Building for at least one hour in every 24. The latter is hardly an onerous requirement

given that we understand that there were at any one time some 20 or so occupants. In addition, the evidence of Ms Oxley, not challenged in any real degree, was that there was no record of the comings and goings of the guardians and the inspection of the room was nothing more than one might find in an AST. In addition, she was provided with a key which did give her exclusive occupancy of room 4.1 at the Building. The other provisions of Clause 10 of the Agreement would not be so unusual in a standard AST agreement relating to an HMO.

46. We find that this Building, once a commercial enterprise is now being used for residential purposes. It is not clear whether there is planning for this use but to our mind that does not matter. The fact that the respondent applied to another Local Authority, in respect of another building, for a Temporary Exemption Certificate does not persuade us that this Building is anything other than residential in its present use. To an extent the finding in the Ludgate House case support this view. Indeed, it is noted that the respondent has now made an application for an HMO licence. Mr Tanney accepted that section 254 of the 2004 Act applied to this Building, the only issue being whether Ms Oxley was a licensee or tenant, or some other form of occupant linked to her requirement to occupy.

47. In our finding the Agreement has all the elements of a licence to occupy the room at the Building and that Ms Oxley and Mr Burke had, in real and practical terms, the exclusive use of the sleeping accommodation. The definition of the Nature of a Licence to be found in The Law of Real property at chapter 33 is consistent with this. We heard from Ms Oxley that it was never suggested that she would change rooms, other than by reaching agreement with another guardian and there was no realistic intention that their occupancy of that room, 4.1, would be changed. We find that by reference to the terms of the Agreement, where the phrase licence is used throughout, as it is in the Handbook, and taking into account the authorities provided to us, that Ms Oxley did indeed occupy as a licensee, had in reality exclusive use of the room 4.1 and as such falls within the provisions of the HPA and is entitled to apply for a RRO. Accordingly we find, beyond all reasonable doubt that the respondent has breached s72(1) of the 2004 Act and that by virtue of s40 of the HPA we are entitled to find that an RRO can be made.

48. Having made that finding we need to consider what level of RRO is appropriate in this case. It is accepted that the respondent paid for utilities. Mr Tanney indicated that perhaps 15% might be an appropriate discount to be applied, although not with any force. We find to be on the high side. The licence fee is £927 per month and 15% of that we think would be too much for utilities at this Building. Nearly £140 per month for gas and electricity is too high. Given the lack of evidence available to us we consider that a reasonable reduction of say 10% should be made to reflect the cost of utilities and other costs covered by the respondent for which an allowance should be made,

applying the findings of the UT in the case of Parker v Waller. We calculate that there are 180 days of occupancy at a rate of £30 .48 per day. This gives a figure of £5,486. A 10% deduction gives a figure of £4,937.40. We do not consider there should be any reduction on this amount.

49. The respondent is a professional landlord and has received advice from lawyers as to the basis upon which they can let buildings of this nature. The terms of a white paper were included within the documents provided by the applicant.

50. There is a specific part of the white paper setting out the possibility of HMO requirements indicating it is essential to identify whether the property or part thereof is an HMO and whether it requires a licence. In that regard we find the fact that the respondent has applied to the local authority for an HMO licence for the Building is evidence of its true position. Further, it is noted that under the heading HMO exceptions it states that it is unlikely that this would be relevant to Property Guardianship. We find that this property is an HMO and that the respondents should have known that before letting it to individuals. In the circumstances therefore we find that the respondents conduct in not applying for an HMO licence before July of this year means that it would be inappropriate to reduce the amount of the RRO beyond the 10% reduction we have made. We therefore order that the respondent do pay to the applicant the sum of £4,937.40 within 28 days of the date of this decision.

Tribunal Judge Dutton 9th December 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.

Housing and Planning Act 2016

40Introduction 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.

43Making 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).

44Amount 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

47Enforcement 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.

56 General interpretation of Part

In this Part—

- “body corporate” includes a body incorporated outside England and Wales;
- ““housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling;

  letting”— (a)includes the grant of a licence, but
  b) except in Chapter 4, does not include the grant of a tenancy or licence for a term of more than 21 years,

and “let” is to be read accordingly;

“tenancy”— (a)includes a licence, but
b) except in Chapter 4, does not include a tenancy or licence for a term of more than 21 years.