FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/HMF/2019/0059** **LON/00AZ/HMF/2019/0064** **LON/00AZ/HMF/2019/0069**
Property	**:**	**150 Forest Hill Road, Forest Hill, London, SE23 3QR**
Applicants	**:**	**Kristin Shields (0059)** **Hannah McMillan (0064)** **Sophie Crow (0064)** **Chloe Hewer (0064)** **Francesca Foster (0069)**
Representative	**:**	**In person**
Respondents	**:**	**Simon Rose and Sheradene Rose**
Representative	**:**	**Ms Rea Murray (Counsel)**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Mr Richard Shaw FRICS**
Date and Venue of Hearing	**:**	**20 January 2020 at 10 Alfred Place, London WC1E 7LR**
Date of Original Decision	**:**	**3 February 2020**
Date of Revised Decision	**:**	**9 March 2020**

Revised Decision of the Tribunal

1. The Tribunal makes the following rent repayment orders ('RROs'):

   (i) The Respondent shall refund the sum of £3,320 to Kristin Shields;

   (ii) The Respondent shall refund the sum of £3,320 to Hannah McMillan;

   (iii) The Respondent shall refund the sum of £3,320 to Sophie Crow;

   (iv) The Respondent shall refund the sum of £3,320 to Francesca Foster;

   (v) The Respondent shall refund the sum of £3,320 to Chloe Hewer;

2. The said sums, which total £16,600, are to be paid to the Applicants by 31 March 2020.

3. The Tribunal determines that the Respondent shall also pay:

   (i) Kristin Shields £300 by 31 March 2020, in respect of the reimbursement of the tribunal fees which she has paid.

   (ii) Francesca Foster £300 by 31 March 2020, in respect of the reimbursement of the tribunal fees which she has paid.

The Applications

1. The Tribunal is required to determine three applications which have been made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for RROs in respect of 150 Forest Hill Road, Forest Hill, London, SE23 3QR ("the property"):

   (i) LON/00AZ/HMF/2019/0059 ("0059") was issued by Kristin Shields on 10 September 2019;

   (ii) LON/00AZ/HMF/2019/0064 ("0064") was issued by Hannah McMillan on 12 September 2019. On 21 November 2019, Sophie Crow was joined as a party to this application.

   (iii) LON/00AZ/HMF/2019/0069 ("0069") was issued by Francesca Foster on 12 September 2019;

(iv) LON/00AZ/HMF/2019/0073 ("0073") was issued by Chloe Hewer. On 25 October 2019, the Tribunal made any order joining Ms Hewer as a party to 0064; 0073 was deemed to have been withdrawn.

2. On 15 July 2017, Mr and Mrs Rose granted Kristin Shields; Hannah McMillan; Sophie Crow; Francesca Foster; and Chloe Hewer an assured shorthold tenancy of the property for a term of two years commencing on 15 July 2017 and terminating on 14 July 2019 at a rent of £3,100 per month. They paid a deposit of £4,292.31 which was placed in a rent deposit scheme. The tenancy was granted by Roy Brooks Ltd (Estate Agents) ("Roy Brooks"). It is common ground that the property was a House in Multiple Occupation ("HMO") which required an HMO licence. There was no such licence.

3. Ms McMillan was the lead tenant. She set up a bank account to which the five tenants contributed their 20% share. Rent was paid regularly up to the end of the fixed term. Ms Shields vacated on 13 July and Ms Foster on 14 July. The other three tenants stayed for an additional month. However, they only paid their 20% share, namely a total of £1,860. A deduction of £989 was made from the deposit in respect of breakages, cleaning and garden maintenance.

4. Pursuant to Directions given by the tribunal, the following Bundles have been filed:

    1. Applicant's Bundle (0059);
    2. Applicant's Bundle (0069);
    3. Applicant's Bundle (0064);
    4. Respondent's Bundle;
    5. Applicants' Reply (0059 and 0069);
    6. Applicant's Reply (0064); and 1. Applicant's Bundle (0059)
    7. Additional Witness Statement from Respondent.

    In this decision, "1.10" refers to p.10 of the Applicant's Bundle (0059); "2.20" refers to p.20 of the Applicant's Bundle (0069); and so on. Where the Bundles are not numbered, we merely refer to the tab (i.e. Tab 4).

The Hearing

5. Four Applicants attended the hearing. Ms Hewer was not present. Ms Shields took the lead in presenting their case. Mr Stuart Foster attended to represent his daughter. The Tribunal heard evidence from Ms Shields, Ms Foster and Ms McMillan. We also had regard to a letter, dated 4 July 2019 (at 1.9) from Mr Blaise Macklin, an HMO Licensing and Enforcement Officer employed by the London Borough of Lewisham ("Lewisham").

6. The Respondent were represented by Ms Rea Murray, Counsel, instructed by Anthony Gold. She adduced evidence from Mrs Rose. Mrs Rose's

mother, Mrs Busby was also present. Mr Busby, her husband, is a qualified heating engineer who has carried out work at the property.

7. The Tribunal issued our original decision on 3 February 2020. On 18 February, we set this aside in the light of representations received from Ms Hewer and Ms Foster in separate letters, dated 5 February. On 21 February, the Applicants confirmed that they were content with our draft revised decision. We have had regard to the further representations received from the Respondent, dated 6 March 2020, and have extended the time for payment.

The Background

8. On 6 April 2006, Lewisham introduced a mandatory HMO licencing scheme. In August 2011, Mr and Mrs Rose purchased the property at Forest Hill Road for £645k as their home. They took out an interest only mortgage of £458k. They occupied the property as their home. The property is a substantial house three storey property with five bedrooms. There is a floor plan at 1.45.

9. In 2013, Mr and Mrs Rose decided to move to Spain. They currently live there with their two children aged 10 and 6. Mr Rose runs a cycling business. Mrs Rose has a clothing business.

10. In 2013, Mr and Mrs Rose appointed Roy Brooks as their letting agent. They charge 7% of the rent. They advertised for tenants, carried out credit checks and drew up the tenancy agreement. Thereafter, they collected the rent. Mr and Mrs Rose retained the responsibility for repairs and maintenance. Mr Busby lives locally and was able to arrange for repair. Mrs Rose states that they relied upon Roy Brooks to advise them on their legal duties as landlord. They informed the agent that they might return to the UK at some stage and move back to the property.

11. Mrs Rose explained that Roy Brooks initially granted joint tenancies for a term of a year. Prior to the arrival of the applicants, there were two sets of four tenants. On each occasion, the initial tenancy was extended for a further year. At Tab 4, there is the tenancy agreement granted to the previous tenants. The tenancy was granted for a period of one year from 4 July 2015. The rent was £3,000 per month. On the expiry of this term, it was extended for a further year.

12. On 5 July 2017, the Respondents granted the current tenancy to the Applicants for a term of two years at a rent of £3,100 per month. This was a joint tenancy, each tenant being jointly and severally liable for the full rent. Prior to the grant of the tenancy, Roy Brooks sent a copy of the draft tenancy agreement to the Respondents (Tab 5).

13. Roy Brooks provided the tenants with a Welcome Pack. This included a statement:

> "Roy Brooks does not Manage your property, therefore all matters relating to your tenancy are to be directed to your Landlord(s)".

The names of Mr and Mrs Rose were given together with their address in Spain.

14. On 14 July 2017, Metro Inventories took a number of photographs (at 5.18-23). These show that the property was in a fair condition, consistent with it having been let out for four years. There had been a flood and the applicants were told that new kitchen units would be installed before the start of the tenancy. In the event, it was not installed until August. They were also told that the property would be thoroughly cleaned. The tenants say that this did not occur. The garden was not in a good condition. It was noted that the lawn was patchy and would benefit from attention. Plants were "heavily growing" and would benefit from cutting back.

15. The five tenants were all student nurses/midwives working at Kings College Hospital. It was apparent at the hearing that these applications have created unnecessary antagonism between the parties. However, during the course of the tenancy, the parties accepted that there had been a "live and let live" attitude between landlord and tenant. Ms McMillan was the lead tenant who communicated with Mrs Rose if there were any problems. Both parties accepted that the relationship was good. Although Mrs Rose complained at the hearing of untenant-like behaviour, it was apparent that during the tenancy she had accepted the slightly chaotic life-style which was consistent with five young students who were working long hours for the NHS. There were no written complaints of untenant-like behaviour. At the end of the two-year tenancy, a deduction of £989 was made from the deposit in respect of breakages, cleaning and garden maintenance.

16. However, the tenants did have justified complaints about the state of the property. On 18 October 2017, they had problems with the central heating. This was not resolved until 4 May 2018. On 18 October (at 5.24), Mr Busby advised them to put the programmer on constant. On 14 November 2017 (Tab 3), Ms McMillan e-mailed Mrs Rose about the continuing problems that they were experiencing. The tenants complain that Mr Busby left a valve open as a result of which they had an unusually high fuel bill of some £500. The problem was partially resolved on 9 January 2018, but only finally resolve on 4 May 2018.

17. There were also problems with the shower on the second floor. There was a plastic curtain at the front. There were also problems with the silicon sealant around the tray. As a result, water leaked into the ceiling below. On 10 October 2018 (at 5.11), Ms Hewer reported this to Mrs Rose. She told them not to use the shower. We do not accept the Respondents' contention

that the problem was due to untenant-like behaviour. This shower seemed to be prone to problems. On 21 February 2019 (at 5.12) the ceiling was marked. By 27 February, it was cracking. On 30 March 2019 (at 5.10), part of the ceiling collapsed. It was boarded up, but not repaired. From October 2018 until the end of the tenancy, the tenants did not use the shower. All the tenants had to use the bathroom on the first floor.

18. On 15 February 2019, Mr Blaise Macklin inspected the property. On 15 February (at 2.27) he wrote to Roy Brooks informing them that immediate action was required to licence the property. Roy Brooks e-mailed back stating that they did not manage the property and referred Lewisham to Mr and Mrs Rose. Ms Murray informed the Tribunal that her clients were extremely unhappy with the service provided by Roy Brooks. They are seeking legal advice on whether they have any remedy.

19. On 22 February 2019 (1.9), Mr Macklin telephoned Mr Rose and informed her that the property needed a mandatory HMO licence. On 7 March, Lewisham prepared a schedule of works to improve the fire safety precautions (at 2.30). On 11 March, this was sent to the Respondents. On 25 June, Mr Macklin returned to the property to assess what works had been done. A schedule (at 2.4) identifies those works which had been executed and those which were outstanding. On 25 June, Mr Macklin sent a copy of this schedule to Mr Foster. Mrs Rose stated that she had executed some works at a cost of £220. The further items would have costed some £10,000.

20. Meanwhile, in March 2019, Ms McMillan had approached Mrs Rose seeking a one-month extension of the tenancy to take them to the end of their academic year. On 17 June (Tab 4) Ms McMillan emailed Mrs Rose stating that the tenants had agreed an extension until 15 August. Unfortunately, there was not unanimity between the tenants. On 18 June (at 5.13) Ms Foster e-mailed Mrs Rose stating that she and Ms Shields would be moving out on 14 July as they were not happy with the state of the property. Ms Shields and Ms Foster left at the end of the contractual term. Ms McMillan, Ms Crow and Ms Hewer stayed for an extra month. They only paid their 20% share, thus £1,860 was paid for the last month, leaving a shortfall of £1,240.

21. In March 2019, Mr and Mrs Rose were seriously considering selling the property. Mrs Rose stated that this had been their intention before Lewisham became involved. However, this had been deferred because of the uncertainties created by Brexit. In May, they paid a gardener £600 to smarten up the garden. The Tribunal is satisfied that this was done to make the property more marketable. The Respondents put the sale in the hands of Foxtons. They had lost confidence in Roy Brooks. The property was being marketed before the tenants left. In October, the Respondents completed a sale in the sum of £880k.

22. On 24 June 2019, Mr Foster (at 2.38) had asked Mr Macklin how Lewisham intended to proceed. Mr Macklin responded that Lewisham intended to issue either Roy Brooks and/or the respondents with a Financial Penalty. On 16 September, Lewisham served a Notice of Intention on the respondents in respect of a Financial Penalty of £8,930. Mr and Mrs Rose took legal advice and responded in October. Lewisham have taken no further action.

Our Determination on Liability

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

(i) On 6 April 2006, Lewisham introduced a mandatory HMO licencing scheme. Under this scheme all HMOs in the borough are required to be licenced.

(ii) The property at 150 Forest Hill Road was an HMO falling within the "standard test" as defined by section 254(ii) of the 2004 Act. In particular:

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

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

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

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

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

(f) the households who occupied the living accommodation shared the kitchen, two bathrooms and a toilet.

(iii) The Respondents were the relevant landlord;

(iv) The Respondents failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

(v) The offence was committed over the period of 15 July 2017 to 24 June 2019.

24. Most of the above matters were conceded by Ms Murray. However, she raised two issues on liability. First, she argued that the Respondents have a defence under Section 72(5)(b) of the 2004 Act. Further, relying upon the decision in *City of Westminster v Mavrgheni* [1984] 11 HLR 56, she argues that once a defendant has met the evidential burden of putting a

defence in issue, it is for the prosecution to rebut it to the criminal standard of proof.

25. Section 72(1) provides (emphasis added) that "a 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 ..... but is not so licensed". Section 72(5)(b) provides that it is a defence that he had a reasonable excuse "for permitting the person to occupy the house". The substance of the suggested defence is that the Respondents had put the management of the property in the hands of reputable manging agents. They expected Roy Brooks to advise them on their responsibilities as landlord.

26. The Tribunal does not accept that this can amount to a defence. If we are wrong on this, we are satisfied that the Applicants have rebutted this defence to the criminal standard of proof. The Act makes two people potentially liable under Section 72(1), namely the "person having control" and the "person managing" the HMO. These terms are defined in Section 263 (see Appendix):

(i) Mr and Mrs Rose were the "person managing" as they are the owners of the property and received rents from the tenants through Roy Brooks, their agent.

(ii) Roy Brooks were the "person having control" as they received the rack-rent from the tenants as agent for Mr and Mrs Rose.

27. Ignorance of the law is no defence. The owners of a property have a distinct liability from that of any managing agents. It is not a defence to claim that they were unaware that an HMO licence is required. The fact that owners of a property have appointed reputable managing agents to manage their property is not a defence constituting "a reasonable excuse", albeit that it may be important mitigation.

28. Secondly, Ms Murray argues that the Respondents have a defence under Section 74(4)(a) in that "a notification had been duly given in respect of the house under section 62(1)". Section 62 relates to the temporary exemption from the licencing requirements. An authority may grant a Temporary Exemption Notice ("TEN"). An authority could grant a TEN if satisfied that the house is no longer to be let as an HMO, for example if it is to be sold with vacant possession. Section 62(1) applies where a person having control of or managing an HMO which is required to be licensed but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

29. Ms Murray refers to e-mails dated 4 April, 26 April, 1 May and 20 June 2019 (all of which are at Tab 4) and suggests that each was sufficient to give the appropriate notification. The problem is that all these e-mails are

equivocal. Thus, in the e-mail, dated 4 April, Mr Rose refers both to obtaining quotes for the required fire precautions and obtaining a valuation from an agent (with a view to a sale). The email, dated 26 April, refers both to a £10k estimate for the cost of the works and to the valuations were the property to be put on the market. The suggestion was that if they could not achieve a swift sale, the Respondents would carry out the required works, possibly with the assistance of grant aid. Mr Macklin's email, dated 1 May, refers to grant aid for the works. Whilst Mrs Rose's e-mail, dated 2 June, states that the property is on the market, she still contemplates renting the property if a sale is not secured in a short period. Mr Blaise responds that Lewisham would grant a TEN if "you are going to sell the property".

30. In his letter, dated 4 July 2019 (at 1.9), Mr Macklin states Mrs Rose did not apply for a Temporary Exemption Notice until 25 June. He noted that a decision on whether to grant such a Notice had yet to be made.

31. We are thus satisfied that Mrs Rose did not give Lewisham the requisite "notification" under Section 62(1) until 25 June 2019. This is the date on which the offence ceased. However, the Applicants are entitled to RROs for the twelve-month period up to 24 June 2019. Even had we been satisfied that the notification had been given on 4 April 2019, the Applicants would still have been entitled to RROs for the twelve-month period up to 3 April 2019.

Our Determination on the RROs

32. 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. The Applicants confirmed that they were not in receipt of any state benefits and that they paid the rents from their earnings.

33. We are satisfied that the relevant period of 12 months is the period between 25 June 2018 and 24 June 2019. Over this twelve-month period, the five tenants paid a total of £37,200. However, each only paid their 20% share, namely £7,440.

34. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord:

(ii) The conduct of the tenants;

(iii) The financial circumstances of the landlord;

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies. There are no relevant convictions in this case.

35. In determining the amount of any RRO, we have had regard to the guidance given by George Bartlett QC, the President of the Upper Tribunal ("UT") in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 2004 Act 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. Although the period for which a RRO can be made is limited to 12 months, a tribunal should have regard to the total length during which the offence was committed. 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 the non-professional landlord.

36. We first consider whether we should make any deductions from the rent of £37,200 in respect of the landlords' outgoings. These are addressed at [33] of Mrs Rose's additional statement. We have regard to the following:

(i) The Respondents contend that we should make a deduction of £6,275.93 in respect of the interest only mortgage payments which were made. We decline to do so. Any owner who buys a property with the assistance of a mortgage is acquiring a capital appreciating asset. The Respondents acquired this property in August 2011 for £645k; they sold it in October 2019 for £880k. They would have had to pay the mortgage regardless of whether they let the property. The Act provides that a RRO must not exceed the rent paid by the tenants during the relevant twelve month period. This should not depend upon whether the landlord has a mortgage or the size of that mortgage.

(ii) We do have regard to the sums charged by Roy Brooks, a total of £6,275.93. However, their work was all front loaded and related to the work involved in advertising for tenants, carrying out credit checks and drawing up the tenancy agreement. Thereafter, they merely collected the rent. Repairs were dealt with by the Respondents. Thus, most of the work by Roy Brooks predated the relevant twelve-month period. We therefore

make a deduction of £2,000, a cost attributable to the collection of rent during this period.

(iii) We allow a further £2,000 for the cost of repairs and maintenance. We do not allow any deduction for the fire safety work; this should have been done before the commencement of the tenancy. We are satisfied that the £600 spent on the garden in May 2019 was incurred to smarten up the property with a view to the proposed sale. Other items of expenditure relate to remedying items of disrepair.

(iv) We are satisfied that the deduction of £989 from the deposit covered any breakages, cleaning or gardening required at the end of the tenancy.

37. We therefore make a deduction of £4,000 from the rent paid of £37,200. We do not consider that any further deduction is required having regard to the financial circumstances of the landlord. Our starting figure is therefore £33,200.

38. We must then have regard to the conduct of the landlords:

(i) We accept that Mr and Mrs Rose are not professional landlords. We also take into account the fact that they put the management of the property into the hands of Roy Brooks who should have known that a HMO licence has required. Ms Murray informed the Tribunal that the Respondents are considering whether they have any remedy against the agents. The significant factor is that the Respondents were not professional landlords. We make a substantial reduction for this, and the RRO which we make is some 20% lower than it would otherwise have been.

(ii) We note that the offence was committed over the period 15 July 2017 to 24 June 2019, somewhat more than the twelve-months which we can reflect in the RRO. It had been let for the four previous years.

(iii) The Respondents did not execute the more expensive works (at an estimated cost of £10,000) required by Lewisham to improve the fire precautions.

(iv) We also have regard to the disrepair. However, this is also reflected in the limited deductions which we have allowed for repairs and maintenance. We avoid any double counting.

39. We must also have regard to the conduct of the tenants:

(i) Mrs Rose made sustained criticism of the manner in which the tenants treated the property. We reject these criticisms. There were no written complaints of un-tenant-like behaviour. Both Ms McMillan and Mrs Rose

accepted in evidence that the relationship between the parties had been good. We accept that the lifestyles of these five student nurses who were working long hours was somewhat chaotic. However, at the end of the tenancy, any breakages, cleaning and garden maintenance was addressed through a deduction from the deposit.

(ii) We have regard to shortfall of £1,240 in the rent paid for the last month. It is difficult to apportion blame between the five tenants for this. They were all jointly and several liable for the full rent. Two tenants wanted to leave early concerned about the safety of the property; the other three wanted to stay for an extra month.

40. We take all these factors into account. Our starting point is the net figure of £33,200. Each Applicant paid 20%, namely £6,640. We make RROs of 50% in respect of the net rent paid by each Applicant, namely £3,320.

41. We further order that the Respondents should refund to the Applicants the tribunal fees which they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We do not consider that they should be penalised for having issued three applications. The difference of opinion as to when they should surrender their tenancy has caused some tension between the Applicants. They applications were issued some weeks after they had left the property. Ms Shields and Ms Foster both paid application fees of £100 and hearing fees of £200. Ms McMillan completed an application for Help with Fees and both the applicant and the hearing fees were waived.

Judge Robert Latham
10 March 2020

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 revised 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

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

62 Temporary exemption from licencing requirement

(1) This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

(2) The authority may, if they think fit, serve on that person a notice under this section ("a temporary exemption notice") in respect of the house.

(3) If a temporary exemption notice is served under this section, the house is (in accordance with sections 61(1) and 85(1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.

(4) A temporary exemption notice under this section is in force–

(a) for the period of 3 months beginning with the date on which it is served, or

(b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.

(5) If the authority–

(a) receive a further notification under subsection (1), and

(b) consider that there are exceptional circumstances that justify the service of a second temporary exemption notice in respect of the house that would take effect from the end of the period of 3 months applying to the first notice,

the authority may serve a second such notice on the person having control of or managing the house (but no further notice may be served by virtue of this subsection).

(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of–

(a) the decision,

(b) the reasons for it and the date on which it was made,

(c) the right to appeal against the decision under subsection (7), and

(d) the period within which an appeal may be made under that subsection.

(7) The person concerned may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.

(8) Such an appeal–

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(9) The tribunal–

(a) may confirm or reverse the decision of the authority, and

(b) if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the tribunal directs.

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.

.....

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

254 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.

263 Meaning of "person having control" and "person managing"

(i) "person having control" means "(unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent."

(ii) "rack-rent" means "a rent which is not less than two-thirds of the full net annual value of the premises."

(iii) "person managing" means "the person who, being an owner or lessee of the premises:

"(a) receives (whether directly or through an agent or trustee) rents or other payments from (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises……; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

(iv) References in the Act to any person involved in the management of a HMO include references to the person managing it.

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 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.