



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00BG/HMK/2019/0071**

**Property** : **164 Telegraph Place, Isle of Dogs,  
London E14 9XD.**

**Applicants** : **Paola D’Andrea; HaPhoung Vi Pham;  
Cristina Onica-Rakovszky;  
Victoria Sanchez Torres; Alejandro  
Soliano Verdu and  
Maria Jesus Yagues Miravete**

**Representative** : **London Borough of Tower Hamlets.  
Mr. Muhammed Williams**

**First Respondent** : **Ms. E. A. D’Costa.**

**Representative** : **In person.**

**Second Respondent** : **FTC Property Limited trading as  
Apartment Wharf**

**Representative** : **Archstone solicitors**

**Type of application** : **Application for a rent repayment order.**

**Tribunal members** : **Judge Pittaway  
Ms S Coughlin MCIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of Hearing** : **19 February 2020**

**Date of Reconvene** : **21 September 2020**

**Date of Decision** : **20 October 2020**

## DECISION

### Decisions of the tribunal

1. The tribunal makes the following rent repayment orders, namely that;

The First Respondent shall refund the sum of £16,000 to the Applicants  
The Second Respondent shall refund the sum of £6,218.53 to the Applicants

2. The tribunal determines that the First Respondent shall pay the Applicants £150 in respect of the reimbursement of the tribunal fees paid by the Applicants and Second Respondent shall pay the Applicants £150 in respect of the reimbursement of the tribunal fees paid by the Applicants.

### The application

3. The tribunal received an application under section 41 of the Housing and Planning Act 2016 (**‘the 2016 Act’**) for rent repayment orders (**“RROs”**) in respect of 164 Telegraph Place, London E14 9XD (**‘the Property’**). The London Borough of Tower Hamlets is the local housing authority, and assisted the Applicants.
4. The application has been brought by the Applicants jointly in respect of the rents and periods for each respective applicant set out in the table below.

Tenant	Term and rent per month	Period in respect of which RRO claimed	Amount claimed
Ms D’Andrea	30/7/18 - 5/10/18; then 5/10/18 - 5/10/19.  £679	1/10/18 – 31/7/19	£6,801
Ms Ha Phoung Vi Pham	4/10/18 – 5/10/19  £628.33	4/10/18 – 31/7/19	£6,283.30
Ms C. Onica- Rakovsky	21/1/19 – 5/10/19  £736.66	21/2/19 – 30/7/19	£5,093.76 (stated to be £5092.96 in witness statement annexures)
Ms V. Sanches- Torres	6/10/18 – 1/10/19  £585	6/10/18 – 30/7/19	£5,850
Mr A. S. Verdu and Ms M.J. Yagues Miravete	23/12/17 – 5/10/18; then 5/10/18 – 5/10/19  £823	5/10/18 – 30/7/19	£8,230

5. The tenants were all in occupation of the property from October 2018 to either 30 or 31 July 2019, with the exception of Ms Onica-Rakovsky. All occupied under Assured Shorthold Tenancy Agreements in which the landlord is named as FTC Property Limited, t/a Apartment Wharf and which provide for the rent to be paid on the first day of each calendar month. All the tenants paid their rent to FTC Property Limited.
6. In their application the Applicants named Mr Muhammed Williams of the London Borough of Tower Hamlets as their representative. They named the freeholder, Ms D'Costa as the respondent. In their application they stated that they understood that FTC had a 'tenancy agreement (Company Let)' with Ms D'Costa, dated 7 August 2015, for a term of three years, at a monthly rent of £2250 for the first year of the term, £2350 for the second year of the term and £2450 for the final year of the term.

### **Directions**

7. On 26 November 2019 the tribunal issued Directions, which named both Ms D'Costa and FTC Property Limited as respondents (collectively '**the Respondents**'), and fixed the date for the hearing as 19 February 2020.
8. The Directions set out the issues which the tribunal would need to consider. The Respondents were advised to seek independent legal advice. The parties were directed to file bundles of documents with the tribunal, the Applicants by 19 December 2019, the Respondents by 17 January 2020.
9. The application and tribunal's Directions were sent to the Second Respondent on 17 December 2020, but these were incorrectly addressed to 'Ha Phuong Vi Pham, Apartment Wharf, 2 Harbinger Road London E14 3AA'.
10. FTC Property Limited t/a/ Apartment Wharf was again joined to the application on 8 January 2020, and a copy of the order of joinder sent to it on the same day.
11. A further copy of the application form and Directions of 26 November 2019 were sent to the Second Respondent on 22 January 2020, and the timetable for the First Respondent and the Second Respondent providing the bundles required by the tribunal extended to 7 February 2020.
12. The First Respondent, Mrs D'Costa provided the tribunal with an (undated) witness statement and bundle of supporting documents. In this she sought to have the application dismissed for the late delivery (by a few days) of the applicants' bundle, arguing that the tribunal had no further jurisdiction by reason of the warning set out in the Directions. The tribunal rejected this application and did not strike out the application.
13. A bundle for the Second Respondent was e mailed to the tribunal by Archstone solicitors on 18 February 2020, with a request for an adjournment of the hearing on the basis that their client had only been added as a respondent to the application on or after 22 January 2020 and had not had time to prepare for the hearing.

14. The tribunal did not agree to an adjournment of the hearing but, at the hearing, directed that each party might make written submissions, additional to the submissions made by each party at the hearing, by 4 March 2020. Each party was then given the right to respond to those additional submissions by 18 March, following receipt of which the tribunal stated that it would reconvene (without the parties present) to reach its decision.
15. The tribunal received further submissions from Mrs D'Costa, a witness statement from Mr Lai and additional submissions from Mr Williams.
16. Because of the COVID-19 Pandemic it was not possible for the tribunal to reconvene to consider its decision until 21 September 2020. Between the original hearing and the date of the reconvene the decision in *B R Vadamalayan v Elizabeth Stewart and others* was handed down by the Upper Tribunal and is relevant to the tribunal's decision. The tribunal therefore issued further directions inviting the parties to make further submissions in the light of that decision by 3 October 2020 and before the tribunal reached its decision.
17. The tribunal received further submissions from the First Respondent dated 2 October 2020.

### **The Hearing**

18. Ms Rakovsky, one of the applicants, and Mr Williams from London Borough of Tower Hamlets attended the hearing. Ms D'Costa attended the hearing, as did Mr Lai of FTC Property Limited.
19. The tribunal heard evidence from all of the above attendees.
20. The tribunal had regard to the witness statements in the bundles, the evidence and submissions that it heard and the subsequent submissions received from the parties in accordance with its subsequent directions in making its decision.

### **The Evidence**

21. The Property is described in the application as a two story house with five bedrooms, one kitchen and two bathrooms. No party requested an inspection and the tribunal did not consider that one was necessary.
22. Mr Williams gave evidence that when the property was inspected on 3 October 2019 it was occupied by six persons. He also provided evidence of the rent that had been paid by each of the applicants.
23. Mr Williams, on behalf of the applicants, submitted that from 1 October 2018 the Property was one which required a mandatory Licence; having five or more people living in two or more households with shared accommodation. Prior to that date it would only have required a mandatory licence if it had been a property of three stories or more. Ms D'Costa had completed the on-line application form for an Additional HMO Licence on 31 July 2019. While this was not the correct Licence to be applied for the applicants were prepared to treat this as the date the application

for a licence was duly made. A Mandatory HMO Licence was granted to Mrs D'Costa on 3 December 2019.

24. Mrs D'Costa gave evidence that in 2015 she entered into a company let of the property with Apartment Wharf and that she had no direct contractual relationship with the applicants. When she entered into this agreement in 2015 the property did not require a mandatory licence, and this was confirmed in 2017 after a visit by Mr Ali Hempstead of Tower Hamlets Borough Council. Mrs D'Costa gave evidence that she understood that Mr Hempstead would inform her if the position with regard to the need for a mandatory HMO Licence changed. She understands that following a visit from Mr Harvey in October/November 2018 Tower Hamlets obtained her ownership details from the Land Registry but did not contact her to advise her of the need for a mandatory licence. As soon as she became aware of the need for a mandatory licence she applied for one in July 2019.
25. Mrs D'Costa submitted that she should have been given notice of the intended proceedings by LB Tower Hamlets under section 42 of the 2016 Act and that as it had not done so it was unable to bring a Rent Order Claim.
26. Mrs D'Costa further submitted that as the offence had been committed on 6 October 2018 and the application was received by the tribunal on 21 November 2019 the application had been made out of time, referring to section 42(3)(b) of 2016 Act.
27. Ms D'Costa also referred to the notification requirements relating to designations on a local authority under section 59 of the 2004 Act.
28. Mrs D'Costa submitted that the application should have been made against FTC Property Limited as landlord of the applicants and not against herself, the owner of the Property. She further submitted that the amount of rent being claimed was incorrect, as the Property did not have five tenants until 6 October 2018 and that she did not receive 2/3 s of the annual rack rent for the Property. She gave evidence that the annual rent paid to Apartment Wharf was £41,423.88 and she received rent of £27,000, and that therefore, citing the decision in *Goldborough* she was not a person having control and management of the Property.
29. Ms D'Costa submitted that expenses should be taken into account by the tribunal. She asked the tribunal to dismiss the application by reason of late submission by the Applicants of their bundle.
30. Mr Lai of FTC Property Limited, in his witness statement of 7 February 2020 submitted that the rent calculation of the amount claimed by the applicants was incorrect, and that during the period 1 October 2018 to 31 July 2019 they received £30,819.63 by way of rent from the applicants, not £32,257 as stated in the claim. During that period FTC had paid £24,500 to the First Respondent. Under the terms of their agreement with the First Respondent she was responsible for obtaining any necessary licence from the local authority. He also submitted that the local authority should have informed FTC of the change in licensing requirements and had not done so. He also submitted that, by reason of late receipt of bundles, FTC had not had sufficient time before the hearing to prepare for it.

31. In his subsequent witness statement, which the tribunal is treating as submissions, Mr Lai submitted that as it was the First Respondent's obligation under the agreement with his company to ensure that all necessary consents had been obtained she was responsible for obtaining any necessary HMO licence. He submitted that the Second Respondent did not have control of the property, all they did was select the tenants and receive their rent.
32. Neither respondent provided details of their financial circumstances as required by section 44(4) of the 2016 Act. The First Respondent submitted that she is a single mother of three children, supporting one child at university, another as an apprentice on a minimum wage and the youngest still at primary school. She also believes that she may be facing redundancy over the next few months. Both referred the tribunal to expenditure incurred in relation to the Property.

### **The law**

33. The relevant legal provisions are set out in the Appendix to this decision.
34. The tribunal has also had regard to the following decisions;  
*Goldsbrough & Anor v CA Property Management & Ors* [2019] UKUT 311 (**'Goldsbrough'**); and  
*B R Vadamalayan v Elizabeth Stewart and others* [2020] UKUT 0183 (**'Stewart'**)

### **The tribunal's decision and reasons**

#### **Notice under section 42 of 2016 Act**

35. The London Borough of Tower Hamlets is not the applicant and it does not bring the application. It is representing the Applicants. Accordingly it is not necessary for it to give notice to Mrs D'Costa of intended proceedings by the London Borough of Tower Hamlets under section 42 of the 2016 Act.

#### **Notification under section 59 of the 2004 Act.**

36. This section applies to the designation of areas subject to additional, not mandatory, licensing. It is therefore not relevant to this application.

#### **Offence under section 72(1) of the 2004 Act**

37. The tribunal finds as a matter of fact on the evidence provided to it that the property is an HMO falling within the definition in section 254(2) of the 2004 Act, falling within the "standard test" as defined by that section.
38. It is clear from the evidence provided that until the application was duly made for an HMO licence the property was not licensed as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

#### **The period during which the offence existed**

39. The period in respect of which the applicants seek RROs is from 6 October 2018 to 31 July 2019.
40. It was accepted by the applicants at the hearing that the offence was committed from when Ms V. Sanches-Torres became an occupant of the property on 6 October, and not before.
41. Under section 72(4) of the 2004 Act a person has a defence if, at the material time, an application for a licence had been duly made under section 63 of the 2004 Act, provided that the application is still effective.
42. The tribunal accept that an application for a licence was duly made on 31 July. Although that was for the incorrect form of licence the applicants do not seek an RRO in respect of rent paid after that date.

### **Was an offence committed within twelve months of the application**

43. The tribunal finds that an offence was committed within the period of twelve months prior to the receipt of the application.
44. By section 41(2) of the 2016 Act a tenant may only apply for a RRO if the offence was committed in the period of twelve months' ending on the day when the application was made. Here the application was received on 21 November 2019. The offence was committed from 6 October 2018 until 31 July 2019, the date on which the application for a licence was made. Contrary to Ms D'Costa's submission it is not the date upon which the offence commences that is relevant. It is the date the offence ceases to be committed that is relevant and in this application this is taken as 31 July 2019.

### **The tribunal's discretion in making an RRO**

45. Under section 43(1) of the 2016 Act the tribunal may make RROs; it is not required to do so. In the circumstances of this case, in particular the involvement of the Second Respondent, a professional property company, the tribunal consider that it is appropriate to make RROs.

### **The relevant respondent**

46. The Applicants have not distinguished between the First Respondent and Second Respondent in seeking the RROs. *Goldsbrough* makes it clear that there can be more than one landlord, but states that the relevant payer is a matter on which the applicant should address the tribunal. Here the Applicants have submitted that both the First Respondent and the Second Respondent are liable without any further submission in this regard.
47. Section 72(1) of the 2004 Act provides that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under that Part of the 2004 Act but which is not so licensed.

48. By section 263(1) of the 2004 Act a “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.
49. Section 263 (2) defines “rack-rent” as a rent which is not less than two-thirds of the full net annual value of the premises.
50. No party suggested to the tribunal that the rent paid by the applicants was not a ‘rack rent’.
51. The Second Respondent was a “person in control” as it received the rack rent, and this is irrespective of whether it received it on its own account, or as agent of the First Respondent.
52. The tribunal accept the manner in which the First Respondent has apportioned the monies for the period 6 October 2018 to 31 July 2019 under the heading ‘Actual Days’ in Appendix 25 of the First Respondent’s witness statement. The tribunal also accepts her figure for the rent paid by the Applicants to the Second Respondent during that period of £31,396.70. In her witness statement the First Respondent stated that the monthly rent paid by the Second Respondent to the First Respondent during the period in question was £2,250 per month. Under the agreement of 3 August 2015 made between the First Respondent and the Second Respondent the rent payable to the First Respondent in the year to August 2018 was £2,450 per month and that is the sum that the Second Respondent said was being paid per month to the First Respondent after August 2018. The tribunal accept the First Respondent’s monthly figure as that was evidenced by copy bank statements in the First Respondent’s bundle. The tribunal have therefore taken the rent paid to the First Respondent for the period to be £22,137.10.
53. Even before permitted deductions are taken from the rent received by the Second Respondent to calculate the full net annual value of the premises, the amount received by the First Respondent is more than two-thirds of the rent received by the Second Respondent. Accordingly, the First Respondent is also a “person in control” for the purposes of section 263(1).
54. By Section 263 (3) of the 2004 Act a person is “a person managing” in relation to premises if they are an owner or lessee of the premises and receive (directly or through an agent or trustee) rents from persons who are in occupation of a house in multiple occupation as tenants or licensees of parts of the premises.
55. The First Respondent owns the premises. It is her submission that she received rent from the Second Respondent, whereas it is the Second Respondent’s submission that the First Respondent received the rent from the occupants of the house, through the agency of the Second Respondent.
56. The Second Respondent was the lessee of the First Respondent under an Agreement of 3 August 2015 expressed to be for a term of three years to 6 August 2018. There was no suggestion that a further agreement had been completed but the relationship of landlord and tenant had clearly continued after August 2018. The Second Respondent referred to the provisions of that agreement as evidence of its relationship with the First Respondent after the expiry of the contractual term. The agreements entered into by the Second Respondent with the respective applicants contain a warranty, at clause 5, that it is, ‘the sole owner of the



leasehold/freehold interest in the Property' which the tribunal finds confirms the Second Respondent considered that it had a leasehold interest in the property.

57. On the basis of the evidence before it the tribunal find that the Second Respondent was a lessee of the premises and received the rent from the house occupants, and therefore was a 'person managing' the property. The Second Respondent claimed to be no more than the First Respondent's agent but conversely also claimed that the terms of its tenancy from the First Respondent still applied.
58. As a lessee of the premises the Second Respondent paid rent to the First Respondent. The tribunal therefore find that the First Respondent did not receive rent from the occupants of the house and was therefore not a 'person managing' the premises in accordance with the statutory definition of that term.
59. Accordingly both respondents are persons against whom RROs may be made.

### **The amount of the RRO**

60. By section 44(3) of the 2016 Act the amount that the landlord may be required to repay in respect of a period must not exceed the rent in respect of that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period. At no point did the applicants indicate that they were in receipt of any state benefits.
61. Under section 44(2) of the 2016 Act where the offence is under section 72(1) of the 2004 Act the amount must relate to rent paid by the tenant in respect of a period, not exceeding twelve months, during which the landlord was committing the offence. Here the applicants are seeking RROs in respect of the period from 6 October 2018 to 31 July 2019. At the hearing it was accepted by the applicants that 6 October 2018 was the date on which the offence under section 72(1) of the 2004 Act commenced.
62. The 2016 Act gives the Tribunal discretion as to the amount of the order. However following the decision in *Stewart* the tribunal is required to take as its starting point the maximum amount repayable. The First Respondent received rent of £22,282.26 during the period. The Second Respondent received gross rent of £ 9,259.6 during the period. These are the figures from which the tribunal has started.
63. Each respondent has asked for certain costs that she/it had incurred in relation to the property to be taken into account. In her further submissions Ms D'Costa argued that the tribunal should still take into account the costs to which she referred. However, following the decision in *Stewart* (paragraph 53), by which the tribunal is bound, it is not open to the tribunal to deduct expenditure that a respondent has incurred in order to achieve a rental income from the property or in performance of obligations as a landlord. Accordingly the only expenditure that the tribunal can deduct are the cost of utilities and certain other limited expenditure by the Second Respondent, as set out below.
64. In determining the amount either respondent might be required to repay the tribunal has had regard to section 44(4) of the 2016 Act, which requires the tribunal to have regard, in particular, to the conduct of the landlord and the tenant, the

financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applies.

65. The tribunal is not aware that either respondent has been convicted of an offence.
66. The tribunal then considered the conduct of the parties. The Second Respondent was managing the premises. It is a professional property company. It drew the tribunal's attention to clause 5.2 of its agreement with the First Respondent, 'that all consents necessary to enable him to enter into this Agreement ..... have been obtained' submitting that this put the onus on the First Respondent to obtain the necessary HMO licence. This clause speaks to the position when the agreement is entered into. By clause 2.32 the Second Respondent was under an obligation to notify the First Respondent of any order made by any competent authority in respect of the Property. It does not appear to have notified the First Respondent of the change in HMO licensing requirements.
67. The First Respondent states that in September 2017 (at which point the Premises did not require a mandatory licence) she asked Mr Ali Hempstead of London Borough of Tower Hamlets to advise her should the premises need a licence in the future, and that this was not done. She submits that she applied for a licence as soon as she became aware that one was required. The tribunal find that Ms D'Costa genuinely believed that she would be told by Tower Hamlets if the premises required a licence. Further she was entitled, under the terms of her agreement with FTC, to expect them to advise her should a licence become necessary and they did not do so.
68. The tribunal's consideration of the Respondents' financial circumstances has been hampered by lack of evidence. The First Respondent referred in passing to dependent children and redundancy but otherwise supplied no evidence of her financial circumstances. The Second Respondent offered no evidence of financial circumstances.
69. The First Respondent received rent of £22,137.10 during the period. She has committed a technical offence but she believed that she would be advised should a mandatory licence become necessary. It is not an obligation on Tower Hamlets to do so but she might reasonably have expected FTC to advise her, as set out in their agreement. Accordingly the tribunal reduce the amount repayable by the First Respondent to **£16,000.00**.
70. The Second Respondent received gross rent of £9,259.6 during the period. Under the terms of the tenancy agreements under which the tenants occupied the property the tenants covenant to keep the landlord indemnified in respect of council tax, water rates and for utilities. The tribunal therefore deduct from the gross rent that the Second Respondent received what it paid by way of council tax, for utilities, water rates and broadband, but not the cost of cleaning, which is expenditure that a respondent has incurred in order to achieve a rental income from the property. On the basis of the figures before it the tribunal calculate the cost of the deductible items to have been £1,300.15 for council tax, £1,116.92 for utilities, £424 for water rates and £200 for Broadband, making a total of £3,041.07. This gave the Second Respondent a net rent of £6,218.53. The whole of this net amount should be repaid to the Applicants. There is nothing in the evidence

before the tribunal as to the conduct of the Second Respondent to suggest that a reduction in this sum is appropriate.

71. The tribunal considers it as appropriate to make the RROs have been made against the both the First Respondent and the Second Respondent the applicants' fees of £300 should be reimbursed.

**Name:** Judge Pittaway

**Date:** 20 October 2020

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

### **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.

##### **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.

## **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” etc.**

(1) In this Act “person having control”, in relation to premises, 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.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, 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; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole 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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) 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 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.