FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMF/2020/0177 V**
Property	**:**	**8 Rochester Court, Rochester Square, London NW1 9EL**
Applicants	**:**	**Mollie Osborne** **Sarah Hobson** **Karina Engel**
Respondent	**:**	**Metro Muves Ltd**
Type of Application	**:**	**Application for a rent repayment order by tenants** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Judge Nicol** **Ms S Coughlin MCIEH**
Date and Venue of Hearing	**:**	**9th March 2021;** **By video conference**
Date of Decision	**:**	**9th March 2021**

DECISION

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1) **The Respondent shall pay to each Applicant a Rent Repayment Order in the following sums:**
   - **Mollie Osborne £4,104**
   - **Sarah Hobson £3,322**
   - **Karina Engel £3,144**
2) **The Respondent shall further reimburse the Applicants their Tribunal fees totalling £350.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Applicants were tenants at the subject property at 8 Rochester Court, Rochester Square, London NW1 9EL, an ex-council 3-bedroom (previously 2-bedroom) flat for the following periods and weekly rents:

- Mollie Osborne 20th May 2019-23rd March 2020 £180
- Sarah Hobson 15th Sept 2019-16th Feb 2020 £160
- Karina Engel 31st May 2019-18th May 2020 £140

2. The Respondent produced a written agreement by which Mr Mesbah Uddin Ahmed leased the property to the Respondent from 1st August 2019 for a fixed term of one year in order for the Respondent to sub-let the property to others and to manage that sub-letting. Therefore, the Respondent became the Applicants' landlord from 1st August 2019. The Applicants had not appreciated the significance of the change because they dealt with the same person, Mr Jahirul Choudhury, when contacting the Respondent or their predecessor, Sterling De Vere Camden Ltd, trading as Sterling De Vere.

3. The Applicants seek a rent repayment order against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act"). Neither Sterling De Vere nor Mr Ahmed is a party to the proceedings.

4. The hearing of this matter was delayed by the restrictions on the Tribunal's work arising from the COVID-19 pandemic. Eventually, the matter was heard on 9th March 2021 by remote video conference. Ms Osborne and Ms Hobson attended for themselves but Ms Engel could not attend due to work commitments. Mr Choudhury attended on behalf of the Respondent.

5. The documents available to the Tribunal consisted of a bundle from each party and a further reply bundle from the Applicants. Ms Osborne and Ms Hobson each provided two witness statements and Ms Engel one. Mr Jahirul Choudhury gave a written statement on behalf of the Respondent. The Tribunal additionally had copies of the Tribunal application and directions and of Ms Engel's tenancy which was on the same terms as those of the other Applicants' tenancies.

The offence

6. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants have alleged that the Respondent was guilty of having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004.

7. The local authority is the London Borough of Camden. Mr Jack Kane, Operations Manager with the Borough, stated in a letter dated 12th February 2020:

(a) Camden introduced an additional licensing scheme for HMOs on 8th December 2015 requiring all HMOs in the borough to be licensed.

(b) He visited the subject property on 7th February 2020 when he found there were 3 tenants living there as separate households, sharing kitchen and bathroom amenities.
(c) He found the property to be in a poor state of repair with fire and electrical safety hazards.
(d) No HMO licence application had been received for the property.
(e) He believed that these matters established the commission of the offence under section 72(1) of the Housing Act 2004.
(f) Camden is taking its own enforcement action.

8. The Respondent denied the matters in sub-paragraph (c) or blamed Mr Ahmed for not addressing them. However, they did not dispute any of the other matters, save also for blaming Mr Ahmed for not applying for a licence. Clause 2.14 of the lease provided that Mr Ahmed was supposed to apply for and obtain any required HMO licence but that is only relevant for any contractual remedies the Respondent may have against Mr Ahmed. The Respondent was fully aware of the relevant circumstances even before signing the lease but made no effort to check if an HMO licence was required or whether Mr Ahmed had applied for one. The circumstances do not provide any defence for the Respondent's failure to apply for an HMO licence.

9. Therefore, it is beyond any reasonable doubt that the Respondent committed a relevant offence, namely having control of or managing a property which should have been licensed as an HMO but was not. Mr Ahmed may well also satisfy the definition of a landlord in these circumstances and so it is possible he has committed the same offence. However, this does not constitute any form of defence for the Respondent, nor does it relieve them of any liability.

10. However, the Respondent only became the landlord when it acquired its interest in the property under the lease of 1st August 2019. Therefore, the Respondent only committed the relevant offence from and after that date.

Rent Repayment Order

11. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation.

12. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 9. In *Parker v Waller* … the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.
>
> 10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be "such amount as the tribunal considers reasonable in the circumstances". … With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):

> "There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable."

11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. …

12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.

13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

> I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. In cases where the landlord pays for utilities, as he did in *Parker v Waller,* there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a

tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

17. Section 249A of the 2016 Act enables the local housing authority to impose a financial penalty for a number of offences including the HMO licence offence, as an alternative to prosecution. A landlord may therefore suffer either a criminal or a civil penalty in addition to a rent repayment order. …

18. The President deducted the fine from the rent in determining the amount of the rent repayment order; under the current statute, in the absence of the provision about reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.

19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. …

13. On the basis of the decision in *Vadamalayan*, when the Tribunal has the power to make an RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the Housing and Planning Act 2016, from which the only deductions should be those permitted under section 44(3) and (4). In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the "starting point". However, he said that this issue is a matter for a later appeal. In the meantime, the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered below, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.

14. The tenancies of Ms Osborne and Ms Engel started before the Respondent became the landlord. An RRO is for repayment of rent paid to the landlord. The Respondent cannot repay rent which was never paid in respect of a period in

which it was not the landlord. Therefore, the calculation of the RRO cannot include a period before 1st August 2019.

15. When Ms Hobson left the property on 16th February 2020, it appears that her room was not immediately re-let. With only two remaining occupants, the property ceased to be an HMO and, therefore, ceased to be licensable. Therefore, the period covered by the HMO must stop at 16th February 2020 for all 3 Applicants.

16. On that basis, the Applicants paid the following amounts to the Respondent in rent over the following periods:

- Mollie Osborne 1st Aug 2019-16th Feb 2020 24 x £180 = £4,320
- Sarah Hobson 15th Sept 2019-16th Feb 2020 22 x £160 = £3,520
- Karina Engel 1st Aug 2019-16th Feb 2020 24 x £140 = £3,360

17. The Respondent alleged there were some rent arrears and some rent had been paid late, incurring late payment fees. In relation to the arrears, the Tribunal accepts the Applicants' evidence that there weren't any because, as evidenced in emails, Mr Choudhury accepted the Applicants' suggestions that the Respondent retain their deposits in lieu of any outstanding rent.

18. In relation to the late payment fees, the Tribunal is doubtful they were lawfully recoverable. Clause 7.5 of the lease purports to permit the Respondent to charge late payment fees of an unspecified amount, plus VAT, from the day any rent was due but unpaid, and to charge interest if it was 3 days late or more. However, under paragraph 4 of Schedule 1 to the Tenant Fees Act 2019, such fees are only permissible for a default in paying rent before the end of 14 days from the due date. Further, it is strongly arguable that clause 7.5 is an unfair term, and therefore not binding on the tenant, under Part 2 of the Consumer Rights Act 2015. In any event, the Tribunal is satisfied that there is no basis under the Housing and Planning Act 2016 to make deductions against RROs for such fees.

19. Under section 44(4) of the Housing and Planning Act 2016, in considering the amount of the RRO, the Tribunal must take into account the conduct of the landlord and of the tenants and the landlord's financial circumstances.

20. The Respondent's only complaint against the Applicants was the alleged late payment of rent. If this were true, it would be relevant conduct. Ms Osborne admitted paying some rent late when she mistakenly set up her direct debit to pay the rent monthly rather than every two weeks. However, the Respondent agreed a payment plan with her to cover her missed payments, including late payment fees, and the Tribunal accepts Ms Osborne's evidence that she paid in accordance with that agreement. The Tribunal also accepts the Applicants' case that the Respondent accepted the retention of deposits in lieu of rent owing at the end of the tenancies of Ms Osborne and Ms Hobson.

21. Mr Choudhury alleged that Ms Hobson owed £320 at the end of her tenancy and both she and Ms Osborne had racked up late payment fees since then. However, if that were true, the Respondent would have made some effort to

chase these monies, particularly as they claim to be short of money now. Instead, Mr Choudhury said no chasing letters or emails were sent and all that was done was to make phone calls which were not answered. Ms Hobson said she still had the same phone number and had received no calls from the Respondent. Both she and Ms Osborne stated that the first they heard of these alleged debts was one week before the Tribunal hearing. The Tribunal is not satisfied that these debts actually exist. Therefore, the Tribunal is further not satisfied that the Applicants' conduct was open to criticism, let alone justifying a reduction in the amount of any RRO.

22. On the other hand, the Tribunal is satisfied that the Respondent's conduct has fallen woefully short of that required and expected of a professional landlord or of the professional managing agent which the Respondent claims to be. The Applicants' witness statements list a large number of failures of service, quite apart from the failure to apply for an HMO licence:

(a) There were problems from the start of the tenancies which were not resolved by the Respondent, including loose wiring and blood stains in the bathroom.
(b) The property was dirty throughout from the start of the tenancy. The Respondent did not provide a bin as their predecessor had promised. A vacuum cleaner had been supplied but did not work. The Respondent sent a man to do cleaning on a regular basis but his efforts were desultory and ineffective – he mopped the kitchen, bathroom and toilet for 20 minutes and then left the bucket of dirty water. Ms Hobson found the larvae of a carpet beetle when changing her bedsheets for the first time.
(c) The Respondent did not respect the Applicants' privacy. Despite the fact that all the Applicants are female, male operatives acting on the Respondent's behalf felt free to enter the property at any time without notice to any of the Applicants and did so on a number of occasions.
(d) There was a cabinet with a broken handle. On one occasion when Ms Osborne tried to open it, the drawer fell onto her foot, breaking her toe and necessitating a visit to the hospital.
(e) A window in Ms Hobson's bedroom had a gap and would not close properly.
(f) Tiles around the boiler and the toilet cistern were smashed and grouted back into position.
(g) The bathroom had black mould which could not be washed off and was exacerbated by the lack of an extractor fan.
(h) The seals on both the fridge and the oven were broken and the doors on neither of them would close properly.
(i) When the fridge was replaced, the unit which had been around it was removed and never replaced.
(j) The location and state of the oven caused the sides of the neighbouring worktops to be singed.
(k) The Respondent was due to fit a new gas cooker. Three operatives attended on 28th January 2020, none of whom appeared to have any experience with fitting gas appliances, let alone being CORGI-registered (one being the cleaner). They were unable to fit it properly and left a pipe unattached, leaking gas into the property. The Applicants suffered headaches and feelings of sickness.
(l) The Applicants' bundle contained various texts and emails in which Ms Hobson notified the Respondent about each issue. The Respondent's standard response

was to claim that action would be taken or had been taken but, in fact, that was rarely the case, often despite the attendance of the aforementioned operatives.

23. The Applicants said they found the constant need to raise issues with the Respondent and the Respondent's lack of effective action exhausting. They got the impression that the Respondent did not care.

24. Mr Choudhury explained that the intended arrangement with Mr Ahmed was that Mr Ahmed would be responsible for addressing such concerns. Mr Choudhury said that the Applicants' complaints were passed on promptly and that the operatives who failed to fit the new cooker properly worked for Mr Ahmed, not the Respondent. He also said the Respondent nevertheless took it upon themselves, at their own expense, to ensure the cooker was properly fitted on 5th February 2020 and that wiring issues were attended to on 18th February 2020.

25. However, when the Respondent signed the lease, they became the landlord with all the responsibilities which go with such a position, including duties under sections 9-11 of the Landlord and Tenant Act 1985 to ensure the property is fit for human habitation and in repair. It is not possible to contract out of such obligations, whether by a clause in the lease or otherwise, and it is not acceptable to avoid the responsibilities by trying to pass them on to someone else. Even assuming that the Respondent passed on all the Applicants' complaints promptly and accurately, there appears to have been no effort to follow up to ensure that Mr Ahmed was meeting those responsibilities.

26. Mr Choudhury alleged that the property was in good condition when first let and provided some (unfortunately poor quality) photos to support his claim. However, one of those photos itself showed unprotected wiring on one bedroom wall. The Applicants' (better quality) photos and their evidence told a different story.

27. For these reasons, the landlord's conduct supports a higher RRO than might have been the case without it whereas there was no reason to complain of the Applicants' conduct.

28. In relation to the Respondent's financial circumstances, Mr Choudhury made two points:

(a) He gave details of the level of profit the Respondent derived. By itself, this is irrelevant because, as established by the Upper Tribunal in *Vadamalayan*, the aim of an RRO is not to deprive a landlord of their profit.

(b) He alleged that the Respondent is struggling to stay in business and is only kept afloat by the Government's furlough scheme. However, the only evidence he provided in support was a copy of the Respondent's bank statement. It showed a declining and low balance but that is well short of the full picture. The latest accounts or, if there are no recent accounts, a statement from the Respondent's accountants giving that full picture would have assisted and might have established the Respondent's point. However, in the absence of proper evidence, the Tribunal has no basis to reduce the amount of the RRO to take account of the Respondent's financial circumstances.

29. In accordance with *Vadamalayan*, deductions may be made for utilities included within the rent. The Respondent alleged, albeit without supporting invoices or bills, that the monthly utility costs were:

(a) Council Tax	£156
(b) Gas	£50
(c) Electricity	£70
(d) Water	£40
(e) Internet	£25
(f) Cleaning	£40

30. The Tribunal does not believe that Council Tax or Cleaning come within the Upper Tribunal's intended exception for deductions. Also, it is not clear if the water is metered so that it varies with the tenants' usage. The remaining items (gas, electricity and internet) add up to £145 or £33.37 per week. In the absence of supporting evidence, the Tribunal must make allowances for the possibility that these sums have been over-claimed. In the Tribunal's opinion, a reasonable figure would be £27 per week or £9 per week per Applicant.

31. The Tribunal sees no reason to reduce the amount of the RRO below the maximum amount, other than by deduction to take account of the cost of the utilities, and awards an RRO to each Applicant in the following sums:

• Mollie Osborne	(£4,320 - £216)	£4,104
• Sarah Hobson	(£3,520 - £198)	£3,322
• Karina Engel	(£3,360 - £216)	£3,144

32. The Applicants also sought reimbursement of their Tribunal fees, £150 for the application and £200 for the hearing, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the fact that the application has been successful, and in the light of all the circumstances of this case, the Tribunal has concluded that it is appropriate to order reimbursement.

Name: Judge Nicol **Date:** 9th March 2021

Appendix of relevant legislation

Housing Act 2004

Section 55 Licensing of HMOs to which this Part applies

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

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

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

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

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

(5) Every local housing authority have the following general duties–

(a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;
(b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and
(c) to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.

(6) For the purposes of subsection (5)(c)–

(a) "Part 1 function" means any duty under section 5 to take any course of action to which that section applies or any power to take any course of action to which section 7 applies; and
(b) the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence.

Section 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.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–
(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations.

A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–
(a) references to a licence are to a licence under this Part,
(b) references to a licence holder are to be read accordingly, and
(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(2) 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,

and that notification or application was still effective (see subsection (8)).

(3) 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.

(4) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(1) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(2) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(3) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(4) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 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.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

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