FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/HMF/2020/0114**
Property	**:**	**17 Rozel Road, London SW4 0EY**
Applicants	**:**	**Josephine Reimer** **Anise Jones** **Nathan Harney** **Lee Newby** **Scott Wright** **Dina Galieva**
Respondent	**:**	**Living London Property Management Ltd**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Nicol** **Mr P Roberts Dip Arch RIBA**
Date and Venue of Hearing	**:**	**20th April 2021;** **By video conference**
Date of Decision	**:**	**24th May 2021**

DECISION

The Respondent shall pay to the Applicants Rent Repayment Orders in the following sums:

- **Josephine Reimer** **£4,220**
- **Anise Jones** **£4,320.49**
- **Nathan Harney** **£4,220**
- **Lee Newby** **£4,220**
- **Scott Wright** **£4,320.49**
- **Dina Galieva** **£5,224.70**

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

Reasons

1. The Applicants lived at the subject property at 17 Rozel Road, London SW4 0EY, a house with 6 bedrooms, 2 bathrooms and 2 kitchens:

   - The First Applicant (Reimer) was in Room 1 from 13th July 2019 to 21st June 2020 at a rent of £912.50 per month;
   - The Second Applicant (Jones) was in Room 2 from 13th July 2019 to 6th December 2020 at a rent of £934.23 per month;
   - The Third Applicant (Harney) was in Room 3 from 12th July 2019 to 31st August 2020 at a rent of £912.50 per month;
   - The Fourth Applicant (Newby) was in Room 4 from 1st July 2019 to 12th March 2020 at a rent of £912.50 per month;
   - The Fifth Applicant (Wright) was in Room 5 from 1st July 2019 to 12th March 2020 at a rent of £934.23 per month; and
   - The Sixth Applicant (Galieva) was in Room 6 from 1st July 2019 to 30th May 2020 at a rent of £1,129.76 per month.

2. The Respondent took a tenancy of the property from the freeholder, Mr Jerome John, for a fixed term of 3 years from 24th June 2019. According to paragraph 3 of the Respondent's Statement in response to the application,

   > The owner was aware that the Property was going to be occupied by clients of the Respondent on a room by room basis and it was agreed that if the Property was going to be subject to HMO Licensing requirements, the costs associated with complying with those requirements would be paid by the Respondent.

3. The Applicants each seek a rent repayment order ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. The matter was heard on 20th April 2021 by remote video conference. The attendees were:

   - Five of the Applicants (Mr Harney was not present) – Mr Newby took the lead in presenting the case on behalf of the Applicants;
   - Mr Alex Freeland, Ms Rhiannon Brewster and Mr Floyd Barnes from the Respondent; and
   - Mr Monty Palfrey, counsel for the Respondent.

5. The Applicants had all given witness statements. Ms Brewster gave evidence for the Respondent.

6. The documents available to the Tribunal consisted of the following in electronic form:

   - An Applicants' bundle;
   - A Respondent's bundle in 3 parts (an index, a statement of case and a supporting bundle);

- A smaller Applicants' bundle replying to that of the Respondent; and
- An authorities bundle from Mr Palfrey.

The offence

7. 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 2016 Act. 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 ("the 2004 Act").

8. The property had five residents and became licensable from 13th July 2019. However, the Respondent did not apply for an HMO licence until 2nd December 2019. The Applicants concede that the Respondent had a defence from that date in accordance with section 72(4)(b) of the 2004 Act.

9. The Respondent concedes that the property was licensable for the period from 13th July to 1st December 2019. They say they were fully aware of the licensing requirements but had difficulties obtaining the relevant documentation without which, so they understood, they could not make an application. They pointed to the online application process which appeared to require some documents but they made no effort to find out from the local authority, the London Borough of Lambeth, whether there was any way around this. Most significantly, the Respondent did not suggest, let alone try to make out a case, that they had a defence of reasonable excuse under section 72(5) of the 2004 Act.

10. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of failing to licence the HMO and has no defence.

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. … Paragraph 26(iii) of *Parker v Waller* is not relevant to the provisions of the 2016 Act; nor is the decision in *Fallon v Wilson* [2014] UKUT 0300 (LC) insofar as it followed that paragraph.

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 the time period allowed under section 44(2) of the 2016 Act, from which the only deductions should be those permitted under section 44(3) and (4).

14. 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" (Judge Cooke also agreed in *Awad v Hooley* [2021] UKUT 0055 (LC) at paragraphs 39-40). 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.

15. Mr Palfrey pointed out that the full amount of the rent paid is the maximum amount of an RRO. He argued that this maximum should be treated like the maximum for a fine and the amount of any RRO should be proportionate to the circumstances of the case so that, like a fine, the maximum is reserved for only the very worst cases.

16. The Tribunal disagrees. An RRO is an order for the repayment of rent. It is not a fine calculated by reference to the rent. The full amount of the rent is the cap for this particular penalty and not the amount reserved for some category of particularly bad cases. There are other sanctions available to local authorities and the courts to ensure that a landlord's offences are treated proportionately. To treat the maximum RRO in the same way as a maximum fine is to ask it to play a role for which it is not designed.

Deductions for the costs of services and utilities

17. The Respondent operates a business model aimed at providing accommodation for a particular demographic of young professional who, they say, prefers shorter-term accommodation with the provision of services such as cleaning and maintenance. They offer membership of the scheme and, instead of tenancies, licences which may be terminated on no more than one month's notice. They take deposits but do not protect them in one of the statutory schemes.

18. Under their licence agreements, the Applicants were supposed to be provided with cleaning, gardening and maintenance services. Under clause 4, the cleaning, provision of loo rolls and broadband were said to be "complimentary". Council tax was included after the first £150. Gas and electricity were included up to a maximum of £350 per month. Mr Palfrey argued that these should be deducted from the calculation of any RRO, save for Council Tax which he conceded.

19. However, as well as not being a fine calculated by reference to the rent, an RRO is not a penalty to deprive landlords of their profits nor a

repayment of that bit of the rent which exclusively relates to use of the property rather than for services or utilities.

20. Rent is defined in section 52 of the 2016 Act as including any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit. That section provides that the calculation of an award of universal credit is to include an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home. There is provision for regulations to be made as to what is meant by payments in respect of accommodation and the circumstances in which a claimant is to be treated as liable, but there are no regulations excluding the costs of services or utilities for tenants in the private sector.

21. The actual rent is specified in the tenancy or licence agreement. As an expert tribunal, the Tribunal can state that the rent is the price the landlord is prepared to offer, and the tenant is prepared to accept, not just for the property itself but for whatever services or inclusive bills it comes with. Landlords and letting companies offer services and inclusive bills not out of some altruistic motives but to ensure that the property is attractive in the market, so that they can find tenants prepared to pay the amount asked in rent. Therefore, there is no basis, either in law or in practice, for disregarding part of the rent to reflect the costs of such services or inclusive bills.

22. In paragraph 16 of her judgment in *Vadamalayan*, Judge Cooke said,

> In cases where the landlord pays for utilities, 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.

This statement rests on the premise that the landlord gets nothing out of the deal and that the inclusion of such costs is not reflected to any extent in the rent, for neither of which is there any evidence.

23. Furthermore, this is a policy argument, putting forward a rational basis for why the statute should provide for the exclusion of such costs. However, such arguments are for the legislature, not this Tribunal. There is nothing in the statute which provides for such deductions. As Judge Cooke said, the only deductions permitted are those listed in section 44 and the costs of services and utilities are not included in that list.

24. The Upper Tribunal is a superior court of record and, therefore, its decisions are binding on this Tribunal. However, utility costs were not part of the deductions sought or granted in *Vadamalayan*. Judge Cooke's comments on utility costs in paragraph 16 of her judgment were not part of the rationale for the decision and were therefore obiter. Therefore, they are not binding.

Conduct

25. Section 44(4)(a) of the 2016 Act requires the Tribunal, in determining the amount of the RRO, to take into account the conduct of the landlord and the tenant. In the experience of the members of this Tribunal, parties to RRO cases have extended this provision into some kind of comprehensive review of each party's actions or omissions throughout the term of the tenancy whereby every single merit or default is weighed in the balance. Hearings which would otherwise struggle to last as long as 2 hours barely finish within a day. Document bundles which would otherwise be slim are padded out with lengthy email and WhatsApp exchanges, file notes and repair records, before and after photos, fire risk assessments, gas safety certificates, energy performance certificates, deposit documentation and so on. Cross-examination of witnesses relates almost entirely to matters of conduct and is far lengthier as a result. The majority of non-legal submissions are taken up with examining the minutiae of each party's conduct.

26. In the majority of cases, most of this detail is irrelevant. The most common complaint, as in this case, is a failure to licence. A tenant's bad conduct or a landlord's good conduct is rarely relevant to understanding how a respondent came to commit the offence of failing to licence. The statute is not limited in what conduct is capable of being relevant but there are degrees of relevance and it would assist if parties concentrated on matters likely to have a material effect on the outcome of the case.

27. As happened here, it is a not uncommon assertion that the standards of management were high so that the tenants did not suffer significantly by the lack of a licence. However, compliance with the licensing regime is an important objective in itself, quite apart from the standards of management.

28. Furthermore, there are two problems with the argument about high standards of management, both of which also apply in this case:

    (a) The Respondent argued that they should get substantial credit for providing cleaning, gardening and maintenance services. Quite apart from the fact that the Applicants alleged that such services ranged from poor to non-existent, this ignores the standards of the HMO regime. HMOs typically involve a higher turnover of occupants and a more intensive use of the property, both of which tend to result in higher wear and tear. Partly in order to manage these effects, HMO licensees are required to meet higher standards than other landlords and agents. For example, under the Management of Houses in Multiple Occupation (England) Regulations 2006, regs.7 and 8 require an HMO manager to maintain and clean the property. The Respondent cannot expect much credit for something they are legally required to do anyway.
    (b) The Tribunal has yet to see a case in which a landlord or agent, without the guidance of the licensing authority, has achieved the full standards of management required of an HMO by law and policy. On 18th February 2020 the Applicants complained to the London Borough of Lambeth

about the conditions in the property, including an infestation of carpet beetles and moths, damp, mould, a lack of consistent heating, electrical faults and fire safety concerns. The Respondent denied any inadequacy in addressing these items but just three examples show why the Tribunal has no doubt that they did not meet the requisite standards:

(i) There was no fire door between one of the kitchens and the rest of the house for many months, despite the Respondent being fully aware of its absence and the need for one, not least through the Applicant's complaints. This is a serious breach of fire safety standards for which there is no excuse.

(ii) The Respondent retained control of the heating, despite the Applicants' complaints, on the basis that the cap on utility costs might otherwise be exceeded. This alone would be sufficient to create hazards of excess cold and excess heat under the Housing Health and Safety Rating System. However, the Tribunal also accepts the evidence of Ms Galieva in her witness statement dated 20th February 2021 (not contradicted or challenged by the Respondent) that she and her fellow occupants did actually experience extremes of cold and heat at various times due to inappropriate levels of heating.

(iii) When Mr Newby persisted in his complaints about various management issues, the Respondent's response by email dated 11th February 2020 was to give him one month's notice to terminate his licence on the basis that he was clearly dissatisfied with the level of service. That is not an appropriate or professional response from a landlord or managing agent to genuine complaints from a tenant or licensee.

29. The Respondent relied heavily on the point referred to above that they knew they should apply for a licence but could not do so in the absence of certain documentation. Since their actions are not claimed to be sufficient to constitute a reasonable excuse, it is difficult to see why they should affect the amount of the RRO. In any event, as already mentioned, they made no efforts to discuss with the local authority how they could get round their application difficulties. It is even more difficult to see why they should receive some relief from the sanction of an RRO on the basis of a lack of effort.

30. The Respondent had little to say about any alleged poor conduct on the part of the Applicants, other than accusing Mr Newby of being "consistently and unapologetically misogynistic and aggressive towards the Respondent's female staff". Mr Newby emphatically denied this, including providing a character reference from the well-known actress, Ms Frances Barber. However, in any event, the Respondent did not provide evidence to support the allegation.

Respondent's financial circumstances

31. Under section 44(4)(b) of the 2016 Act, the Tribunal must take into account the Respondent's financial circumstances. The Respondent had only relatively recently moved into profit after several years in business

when the COVID pandemic hit. The occupancy rate for the rooms they manage has dropped and many of those who remain have had difficulties meeting their financial obligations. The Respondent pointed out that the aforementioned demographic to whom they cater was amongst the hardest hit. The Respondent has had to grant substantial discounts to many licensees and to ask property owners to accept smaller payments from them. They assert that their business is running at a loss again.

32. The Tribunal accepts that the Respondent is suffering financially due to the pandemic. However, by itself, that is irrelevant to the Tribunal's deliberations. In calculating the RRO, the Tribunal will have in mind a figure having gone through the other matters relevant to that determination. The role of the landlord's financial circumstances is to persuade the Tribunal to reduce the amount of the RRO which would otherwise be awarded. This is a matter of whether the landlord is able to pay or whether the consequences of requiring payment of a certain amount are disproportionate. For example, if the amount of an RRO would be sufficiently large that the Respondent would be unable to muster the resources to pay it without going out of business or at least making staff redundant or breaking tenancy agreements with property owners, threatening licensees with homelessness, these would be good grounds for reducing the amount which would otherwise be payable.

33. However, the Respondent's evidence on their financial circumstances makes no claims as to the consequences of their difficulties. The claim appears to be no more than that they are currently financially stretched but they are just about managing the situation. The payment of an RRO may well be painful but, as a penal sum, it is supposed to be. There is no evidence that the Respondent cannot pay the sums under consideration and so there is no basis for reducing the amount of the RRO to take account of their current financial circumstances.

Amount of RRO

34. The Applicants claimed amounts in RROs which started for the Third Applicant from 12th July 2019 and for the last 3 Applicants from 1st July 2019. However, the Respondent's offence commenced when the first two Applicants joined the others in the property on 13th July 2019. This means that the period of claim for all Applicants is 4 months 19 days which has been taken into account in recalculating the amounts claimed in the application:

- The First Applicant @ £912.50 £4,220
- The Second Applicant @ £934.23 £4,320.49
- The Third Applicant @ £912.50 £4,220
- The Fourth Applicant @ £912.50 £4,220
- The Fifth Applicant @ £934.23 £4,320.49
- The Sixth Applicant @ £1,129.76 £5,224.70

35. There is no basis for deducting any amounts and so the Tribunal awards RROs in the above sums.

Name: Judge Nicol **Date:** 24th May 2021

Appendix of relevant legislation

Housing Act 2004

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.

(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,

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

(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.

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

(7) 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.

(1) 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.

(2) 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.

(3) 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).

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

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.

Section 52 Interpretation of Chapter

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"relevant award of universal credit" means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.