FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/HMF/2020/0217**
Property	:	**69 Coopersale Road, London E9 6AU**
Applicants	:	**(1) Alan Guerin** **(2) Cory Hood** **(3) Conner Shorten** **(4) Faysel Elmi** **(5) Harry Brookes** **(6) Maedhbh Kelly** **(7) Romain Ecalle** **(8) Rachel Pereira** **(9) Redd Moore**
Representative	:	**Flat Justice**
Respondents	:	**Tavy Turner Mogridge Cussinel** **Edouard Christian Georges Cussinel**
Representative	:	**Cavendish Legal Group**
Type of Application	:	**Application for a rent repayment order by tenants**
Tribunal	:	**Judge Nicol** **Ms R Kershaw**
Date and Venue of Hearing	:	**14th and 28th May 2021;** **By video conference**
Date of Decision	:	**14th June 2021**

DECISION

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1) **The Respondents shall pay to the Applicants Rent Repayment Orders as follows:**

- **Alan Guerin** **£7,875**
- **Cory Hood** **£3,000**
- **Conner Shorten** **£10,392**
- **Faysel Elmi** **£4,300**
- **Harry Brookes** **£1,979.45**
- **Maedhbh Kelly** **£9,612**
- **Romain Ecalle** **£10,160**
- **Rachel Pereira** **£11,436**
- **Redd Moore** **£9,612**

2) The Respondents shall further reimburse the Applicants their Tribunal fees totalling £300.

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

Reasons

1. The Applicants were tenants at the subject property at 69 Coopersale Road, London E9 6AU, a 5-bedroom terraced house with shared bathroom, toilet and kitchen facilities. The Applicants say they lived at the property as follows:

   - The First Applicant (Guerin) was in room 2 from 1st December 2019 to 1st September 2020 at a rent of £875 per month;
   - The Second Applicant (Hood) was in room 5 from 27th May to 27th August 2020 at a rent of £1,000 per month;
   - The Third Applicant (Shorten) was in room 3 from 3rd March to 4th September 2018 at a rent of £953 per month and then in room 2 from 5th September 2018 to 29th November 2019 at a rent of £866 per month;
   - The Fourth Applicant (Elmi) was in room 3 from 25th March to 25th August 2020, initially at a rent of £850 per month and later £875 per month;
   - The Fifth Applicant (Brookes) was in room 1 from 15th June to 15th September 2020 at a rent of £850 per month;
   - The Sixth Applicant (Kelly) was in room 4 from 1st August 2016 to 3rd October 2020 at a rent of £801 per month;
   - The Seventh Applicant (Ecalle) was in room 5 from 5th April 2019 to 11th January 2020 at a rent of £1,100 per month;
   - The Eighth Applicant (Pereira) was in room 3 from 1st August 2016 to 31st March 2018 and then again from 1st September 2018 to 28th March 2020 at a rent of £953 per month; and
   - The Ninth Applicant (Moore) was in room 1 from 20th December 2017 to 25th April 2020 at a rent of £801 per month.

2. The Respondents are the joint freeholders of the property. They used to live there but, on 28th July 2016, they let the whole property for a term

of 5 years at a rent of £3,050 per month to De Beauvoir & Co Ltd, a property management company run by Mr James Manero.

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

4. In their statement of case the Respondents stated that they defend the Application on a number of bases:

(1) The Tribunal has no jurisdiction in relation to the Third Applicant, Mr Conor Shorten;

(2) The Applicants are put to strict proof that any offence was committed under s.72 of the Housing Act 2004;

(3) If the Applicants prove the essential elements, the Respondents have a reasonable excuse pursuant to s.72(5) of the 2004 Act, in that they did not create any HMO and did not know a HMO had been created by their tenant;

(4) The Tribunal in its discretion should not make any rent repayment order;

(5) If the Tribunal does exercise its discretion:

(a) The amounts claimed by some of the Applicants are incorrect;

(b) The total amount should be heavily discounted to reflect the Respondent's lack of culpability in this matter;

(c) The Applicants' complaints of misconduct by the Respondents are misdirected and disingenuous: the Respondents were not the Applicants' landlord, and many matters of alleged disrepair or failure to manage were not complained of.

5. The hearing of this matter started on 14th May 2021 by remote video conference but had to be adjourned part-heard to 28th May 2021. The attendees were:

- The 9 Applicants (although most did not attend on 28th May 2021);
- Mr George Penny from Flat Justice, representing the Applicants;
- The Respondents;
- Mr Stephen Evans, counsel for the Respondents; and
- Ms Fatimah Ozsayan of Cavendish Legal Group, the Respondents' solicitors.

6. The 9 Applicants and both Respondents had all given witness statements on which they were cross-examined at the hearing on 14th May 2021.

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

- A bundle compiled by Flat Justice;

- A bundle compiled on behalf of the Respondents;
- A reply bundle, also compiled by Flat Justice;
- A skeleton argument from Flat Justice, supported by an authorities bundle; and
- A skeleton argument and authorities from Mr Evans.

The offence

8. 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 alleged that the Respondents were guilty of having control of a House in Multiple Occupation (HMO) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

9. The offence must be proved beyond a reasonable doubt but the Upper Tribunal provided the following guidance in *Opara v Olasemo* [2020] UKUT 96:

> 46. … For a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not have to be proved "beyond any doubt at all". At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells them that it is permissible for them to draw inferences from the evidence that they accept. In this case there were obvious inferences to be drawn from the evidence, both about the eviction and about the circumstances of the other tenants. It may be that the FTT lost sight of those inferences and set the bar of proof too high. …

10. A person commits an offence under section 72 if he is a person having control of or managing an HMO which is required to be licensed. The Tribunal accepts that the Respondents do not fit the definition of a person managing an HMO under section 263(3) of the 2004 Act because they did not receive rent directly or through an agent from the actual occupants. However, the Tribunal is satisfied that the Respondents fit the definition under section 263(1) of a person having control because they received a rack rent for the property.

11. Under section 263(2), "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises. No evidence was presented by either party as to the rental value of the property but it would be a rare case where that would be necessary. The Respondents' tenancy with De Beauvoir was negotiated at arms' length in market conditions and, using its own expert knowledge and experience, the Tribunal is satisfied beyond any reasonable doubt that the rent paid by De Beauvoir satisfied the statutory definition.

12. The Applicants say that, in addition to them, there were other occupants of the property:

(a) A couple whose names the Applicants do not know lived in Room 5 until February 2018;

(b) Maria Matthews lived in Room 2 until August 2018;

(c) Matthew Singleton moved into Room 5 after the unnamed couple and left in March 2019;

(d) Chris Verdicchio lived in Room 5 between February and April 2020.

13. In *Mortimer v Calcagno* [2020] UKUT 0122 (LC) Judge Cooke stated,

> 35. The absence of evidence from one or more occupants of an HMO in a case such as this need not be fatal to the tenants' case. They have to prove their case beyond reasonable doubt, but – depending upon the view the FTT takes of their credibility – they may well be able to do that by a combination of their own evidence and corroborating documentation. As I said in a recent appeal, *Opara v Olasemo* [2020] UKUT 0096 (LC), for a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not have to be proved "beyond any doubt at all". …
>
> 37. The answer is going to vary from case to case. It is unlikely that the FTT would be sure that an offence had been committed on the basis of a written statement – sworn or not – from an applicant together with a copy of another person's tenancy agreement; an applicant who does not attend for cross-examination should not be surprised if his written evidence alone does not furnish proof beyond reasonable doubt, whether or not it is backed up by documentary evidence. On the other hand in a case such as the present where the FTT had an application verified by a statement of truth from one applicant, three tenancy agreements, and the evidence of Mr Mortimer who attended for cross-examination, the strength of the evidence taken together would depend very much upon the evidence given by Mr Mortimer at the hearing. It is well-established that the tribunal will be slow to interfere with the FTT's assessment of evidence where it has heard and seen the witness.

14. Mr Evans submitted that the effect of what Judge Cooke said in paragraph 37 in *Mortimer* was that a person's occupation of a property cannot be established without a copy of their tenancy agreement. He further submitted that, since the Applicants had not provided the tenancy agreements for any of the alleged occupants referred to in paragraph 12 above, they must be taken not to have established their occupancy beyond a reasonable doubt.

15. This was not Mr Evans's strongest submission. It requires a substantial distortion of Judge Cooke's words, and that her words in paragraph 35 are ignored, to reach his interpretation. The tenancy agreements of fellow occupants would not be documents likely to be in the possession or control of the Applicants at any time so it is entirely unsurprising that they are not able to produce them. On the other hand, there is

more than enough evidence on which to base a finding that the other occupants were present and counted for the purposes of establishing the existence of an HMO:

(a) The Tribunal heard from all 9 Applicants and found them to be broadly credible. They conceded matters against their interests, admitted when their memories failed them and were able to give details which were credible and corroborated each other. They all gave consistent evidence as to the presence, and the contribution to the shared household, of the other occupants whom they encountered.

(b) There is no evidence of any kind whatsoever that would suggest that the Applicants would, could or did invent the existence of the other occupants.

(c) Mr Manero and De Beauvoir & Co Ltd were liable to the Respondents for £3,050 per month, later increased to £3,200. In order to pay that sum and make a profit, all rooms needed to be let. Mr Manero and De Beauvoir & Co Ltd were in the business of such lettings. There is no conceivable reason why they would have left rooms empty for months.

(d) All the evidence, supported by the Tribunal's expert knowledge of such lettings, points to the occupancy of the other occupants being on the same basis as that of each of the other Applicants, namely on assured shorthold tenancies, granted through Mr Manero, for the purpose of residential occupation. For example, in a text dated 3rd March 2018 exhibited in the Respondents' bundle, Mr Manero told Mr Shorten that his "contract will be for 6 months, exactly the same as the others". Mr Evans treated Mr Manero's texts as proof of the matters referred to in those texts when referring to disrepair complaints – this one implies that the tenancies of all occupants were on the same terms, as would be expected.

(e) Chris Verdicchio appears in an exchange of messages on the WhatsApp group set up for the occupants of the property.

16. Mr Evans submitted that the Applicants made insufficient efforts to get the other occupants to be witnesses or to provide copies of corroborating documentation. However, it is in the nature of these cases that some tenants have no interest in taking part, whether as an applicant or a witness, even assuming they can be contacted. Being unrelated and often unconnected other than by sharing an HMO, it is common that occupants lose touch after they leave. The First Applicant gave evidence that he contacted Mr Verdicchio who was not interested and that he had no contact information for Ms Matthews or Mr Singleton. This evidence was credible and the Tribunal accepts it. There are no adverse inferences to be drawn from the lack of any contribution from them to this case.

17. Mr Monday Olise, Private Sector Housing Officer with the London Borough of Hackney, provided the following information in an email dated 18th January 2021:

(a) He and a colleague, Mr Kenneth Appiah, carried out an unannounced visit to the property following a complaint of a suspected HMO (the First Applicant said the complaint was his). This was on 20th August 2020.

(b) At the date of inspection, the property was not licensed as it should have been under the 2004 Act.

(c) The property is a 3-storey terraced house comprising 5 bedrooms, including a mini-basement floor used for washing, and was occupied by 5 tenants from 5 different households, all sharing kitchen, toilet and bathroom, so that it was classified as subject to mandatory HMO licensing.

(d) During the inspection, they observed various health and safety requirements were not in place, including fire doors, fire blankets, handrails to steep stairs to the basement, smoke alarms/detectors, broken door handles, holes in the floor and an overgrown garden.

18. The Respondents disputed the alleged problems listed in sub-paragraph (d) above and they are considered further below. However, the Tribunal accepts as true the rest of Mr Olise's email, particularly given that sub-paragraphs (a) and (c) were corroborated by the Applicants.

19. There is no suggestion that the property was licensed at any time, let alone for the period for which RROs are claimed. The issue is whether it needed to be licensed. A building meets the standard test for an HMO (House in Multiple Occupation) under section 254 of the 2004 Act if:

(a) *It consists of one or more units of living accommodation not consisting of a self-contained flat or flats*. The property in this case is a house with 5 bedrooms.

(b) *The living accommodation is occupied by persons who do not form a single household*. The Applicants and their fellow occupants are unrelated and none of them formed a single household with each other.

(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*. The Tribunal is satisfied from their aforementioned witness evidence that the Applicants and their fellow occupants occupied the property as their only or main residence.

(d) *Their occupation of the living accommodation constitutes the only use of that accommodation*. There is no suggestion that the property was being or could be used for anything other than the occupation of the Applicants and their fellow occupants.

(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*. The Tribunal is satisfied that the Applicants and their fellow occupants paid rent for their occupation.

(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. It is not in dispute that the occupants of the property shared the bathroom, toilet and kitchen facilities.

20. Therefore, the Tribunal is satisfied that the property is an HMO. To be subject to the mandatory licensing regime under the 2004 Act, by section 55(2)(a) the property must also satisfy Art.4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 ("the 2018 Order") which came into force on 1st October 2018 (none of the Applicants claim for an RRO covering a period before that date). It must be occupied by:

(a) five or more persons; and

(b) persons living in two or more separate households.

21. The Tribunal is satisfied so that it is sure that the details in paragraphs 1 and 12 above are made out so that the property had at least 5 occupants living in more than two separate households throughout the relevant period.

22. If the Tribunal had accepted Mr Evans's submission that the presence of the other occupants referred to in paragraph 12 above had not been made out, this would have reduced the occupancy to 3 or 4 persons for some periods, taking the property out of the mandatory scheme for any such period. To cover this eventuality, the Applicants sought to rely on the fact that Hackney had designated all HMOs within its district to be subject to an additional licensing scheme. "All HMOs" would include all those otherwise excluded from the mandatory scheme by the aforementioned 2018 Order. In turn that would include the property at any time when it was occupied by only 3 or 4 people.

23. Mr Evans submitted that Hackney's designation did not specify whether it applied to HMOs with any particular number of people and, therefore, the Applicants had not established that it applied to the subject property. This submission was somewhat difficult to follow. Hackney's designation referred to "all" HMOs. That is a sufficient statement to include those with any number of occupants, including 3 or 4. The Tribunal cannot see why Hackney should go on to mention particular numbers of occupants as well.

24. Therefore, the Tribunal is satisfied that, if the occupancy of the property had dropped below 5 people at any relevant time, it would have still been subject to licensing.

Reasonable excuse

25. The Tribunal is satisfied so that it is sure that the required elements of the offence of having control of an HMO which is required to be licensed but is not so licensed have been made out. However, the Respondents argue that they have a defence of reasonable excuse under section 72(5) of the 2004 Act.

26. The Respondents claim to have been unaware of the fact that their tenants, De Beauvoir & Co Ltd, had created an HMO and of the licensing requirements. Ignorance of the law, of course, cannot be an excuse but ignorance of the underlying facts may be: *IR Management v Salford* [2020] UKUT 81 (LC); [2020] HLR 24 at paras 29-30, *Sutton v Norwich CC* [2020] UKUT 90 (LC) at para 221 and *R (Mohamed & Lahrie) v LBWF* [2020] EWHC 1083 (Admin); [2020] HLR 34.

27. Mr Evans cross-examined the Applicants about the various names given as the landlord or managing agents in their tenancy agreements:

(a) The First Respondent, Mrs Cussinel, was listed as the landlord and Concrete Maintenance Ltd (t/a Hertford Group) was listed as the managing agent in the tenancies for Mr Guerin, Mr Hood, Mr Elmi, Mr Brookes and Mr Moore.

(b) Concrete Maintenance Ltd (t/a Hertford Group) was listed as the landlord and as the managing agent in Mr Ecalle's tenancy.

(c) Turnkey Management Solutions Ltd was listed as both landlord and managing agent in Mr Shorten's tenancy.

(d) In Ms Kelly's and Ms Pereira's tenancies (only the first page of each was available), no landlord was listed at all and the managing agent was listed as "De Beauvoir And Company Ltd, trading as Turnkey Management Solutions".

28. The Applicants said they were under the impression that the Respondents were their landlords and that Mr Manero was merely the Respondents' agent, operating through various companies. The Tribunal accepts that the Respondents were the head landlords and that Mr Manero had no authority to put Mrs Cussinel's name into any of the Applicants' tenancy agreements. However, the Tribunal is not satisfied that the Respondents were as ignorant as they claim:

(a) The Respondents describe in their statement of case how Mr Manero contacted them when he found out they were trying to let the property so he was clearly interested in doing the same. They knew his business was letting properties. The First Respondent admitted in her oral evidence that she understood Mr Manero would sub-let the property to multiple tenants and said that the number of rooms being sub-let was no concern of hers as she and her husband would get their rent anyway.

(b) Clause 17 of the tenancy agreement between the Respondents and De Beauvoir expressly permitted sub-letting.

(c) Whatever was in the written agreement, the Respondents retained a degree of control over the maintenance of the property. When the Applicants complained to Mr Manero, he sometimes referred the matter to the Respondents, including complaints about the washing machine, an alleged smell coming from the shower drain, the curtains in one room and a leak through the kitchen ceiling which may have originated from the shower above. In relation to the washing machine, the Respondents' statement of case asserts:

(i) They had British Gas homecare cover for the appliances (i.e. not Mr Manero or his company); and

(ii) In March 2019 they agreed a partial reduction of rent for Mr Shorten to reimburse him for laundry costs.

(d) Message exchanges about these matters showed that the Respondents were aware at the time that the property was occupied by multiple tenants.

(e) The First Respondent said she visited the property briefly in June 2017 and then the "whole family" visited in August 2018, during which she looked in all the bedrooms and saw that each was apparently occupied, with each bed made up. The Second Respondent said he didn't see all the bedrooms but he did leave his sunglasses in the bedroom on the top floor so that they returned the following day to pick them up. They met Mr Shorten and Ms Kelly who raised an issue about a noxious smell in the property. The Respondents engaged with this issue and didn't try to pass on responsibility to Mr Manero or anyone else. The Second Respondent took the opportunity to check the dishwasher and explain its operation to Ms Kelly. Although the Respondents did not meet the other 3 residents, nor did they ask anything about them. It is clear to the Tribunal that the Respondents were aware there were multiple tenants, likely at least 5 (even if they didn't know the exact number), and that they were comfortable with that fact. They had no reason to think that this situation was any different at any other time during their tenancy with De Beauvoir.

(f) In their statement of case, the Respondents asserted that, "it came as a shock to both the Respondents that most of the sub-tenancy agreements bear the names of other companies, such as Concrete Maintenance Limited, Turnkey Management Solutions Limited, and Torrington Residential Limited. The Respondents knew nothing of these entities." This is not borne out by the copy statements of their bank account which were included in their bundle. These show payments of rent coming not only from "DE BEAUVOIR AND CO" but also "FIALLOS MANERO J", "TURN MANA SO LTD", "TORRING RES LTD" and "HERTFORD CO LTD". The Respondents' evidence was that they did not take any notice of these names so long as the rent was coming in each month. If the multiple names had bothered them at all, they would have asked Mr Manero about them.

29. In the Tribunal's opinion, the evidence clearly shows that the Respondents were aware that Mr Manero had created a house in multiple occupation and that, so long as the rent was being paid and the property remained approximately in the condition in which they had left it, they approved of that arrangement. To the extent that they were genuinely ignorant of any details, that ignorance was not inadvertent but conscious and deliberate.

30. In any event, ignorance alone is not an excuse, let alone a reasonable one. The legislation on licensing and rent repayment orders is structured so as to make all those with a superior interest jointly

responsible for what happens in their property. The Upper Tribunal confirmed in *Rakusen v Jepsen* [2020] UKUT 298 that superior landlords, not just a tenant's immediate landlord, may be liable to pay a rent repayment order. This is unsurprising as the private rented sector has numerous examples of arrangements whereby an investor landlord lets to an organisation so that that organisation may sub-let, an arrangement known as rent-to-rent. If the landlord were able to insulate themselves from all responsibility for any sub-letting, the licensing regime and, in particular, the provisions for rent repayment orders would be neutered.

31. Further, the retention of such responsibility is not onerous. A standard assured shorthold tenancy precedent was used to create the letting to De Beauvoir – a company cannot have an assured tenancy under section 1 of the Housing Act 1988 and so the precedent was inappropriate. Instead, the parties could have used a proper agreement which expressly apportioned responsibility for matters such as licensing and contained monitoring provisions such as requiring copies of any occupancy agreements and regular inspections.

32. The Respondents pointed out that this is the only property they have ever let out and they entered into the tenancy with De Beauvoir in a hurry as they had a few short weeks in which to move to Singapore while the First Respondent was pregnant and looking after their children then aged 2 and 6. It is understandable that the Respondents felt that they did not have the time to take professional advice and/or to negotiate a better agreement before leaving but this doesn't apply to any later period. They have now had years in which they could have taken expert advice on their legal obligations as the owners of a property let to multiple tenants and on the practical steps they could have taken to ensure that their property was being lawfully used and managed. The only changes implemented to their relationship with De Beauvoir were to increase the rent to £3,200 per month in July 2018 and then to lower it from April 2020 in response to Mr Manero's pleas of financial difficulties due to the COVID-19 pandemic.

33. The Respondents could have done better and the legislation required them to do better. Therefore, the Tribunal is satisfied that the Respondents have no defence to the charge that they committed the offence of having control of this HMO while it was unlicensed.

Third Applicant

34. The Respondent's first argument, that the Tribunal has no jurisdiction in relation to the Third Applicant, rests on section 41(2)(b) of the 2016 Act which states that a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made.

35. The application was made on 15th October 2020. The Third Applicant vacated the property in November 2019. The Applicants alleged that the property was unlicensed when it should have been licensed from at least January 2018 through to September 2020. Obviously, this encompasses November 2019. Therefore, the Third Applicant's claim is within time under section 41(2)(b).

36. The Respondents appear to have been confused by the fact that different dates were given for the following:

(a) The commission of the offence by the Respondents. Mr Evans rightly submitted that the Respondents were entitled to know on which dates they were said to have committed the relevant offence but the Tribunal had no problem divining this from the application and nor should the Respondents.

(b) The period in respect of which each RRO claim was calculated. RROs are calculated by reference to a period of up to 12 months during which both the offence is being committed and the relevant tenant was in occupation. If the period within which there is both the offence and occupation is longer than 12 months, the Tribunal is able to calculate the RRO by reference to any 12-month period within the longer period. Mr Evans appeared to be suggesting that an applicant is required to nominate a particular period for the RRO calculation but that would not be correct.

(c) The Applicants' occupation of the property. The dates of occupation are relevant to both when the offence was committed and in respect of which period the RROs are calculated but they can start before the commission of the offence and may exceed the maximum period of 12 months for calculating the RROs.

Rent Repayment Order

37. 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. Mr Evans pointed to the discretion the Tribunal has not to exercise that power. However, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO and Mr Evans did not seek to provide any, other than the matters already considered above.

38. 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. It was also stated,

> 38. Mr Waller has referred a number of ways in which he asserts that Mr Parker acted badly as a landlord. They include intimidation and harassment and failure to implement vital repairs, in particular failures to mend the central heating boiler,

which was out of action for periods in 2004 and 2008, and to carry out various works of repair, which resulted in an improvement notice and an interim management order being served on Mr Parker in May 2010.

> 39. I do not think that conduct on the part of the landlord that is unrelated to the offence under section 72(1) that underlies the RRO could entitle the tribunal to increase the amount of the RRO above the level that would otherwise be justified. To do so would be to punish the landlord for matters that form no part of the offence. Mr Parker's offence consisted in the fact that he was a person having control of an HMO which was required to be licensed but was not so licensed. I am not satisfied that the matters of which Mr Waller complains are related to the failure to license the premises. It might on the other hand be open to a landlord to rely on material showing that in all respects other than the failure to license the premises he had been a model landlord. That could constitute mitigation in accordance with the principles that generally apply in sentencing.

39. 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.
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> 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):
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> > "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 …
>
> 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. … the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

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. …

40. 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 2016 Act, from which the only deductions should be those permitted under section 44(3) and (4).

41. 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*.

42. In *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke also expressed concerns (at paragraph 40) that using the total rent as the starting point means it cannot go up, however badly a landlord behaves, thereby limiting the effect of section 44(3). However, with all due respect, this stretches too far the analogy between RROs on the one hand and criminal penalties or fines on the other.

43. Levels of fines in each case are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. However, an RRO is penal but not a fine. The maximum RRO is set by the rent the tenant happened to pay, not by the gravity of the offence. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

44. There is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO, as happened in *Awad v Hooley* when the tenant withheld their rent, and that is how section 44(3) finds expression.

45. The amounts claimed by the Applicants are:

• Alan Guerin	9 months x £875	£7,875
• Cory Hood	3 months x £1,000	£3,000
• Conner Shorten	12 months x £866	£10,392
• Faysel Elmi	3 months x £850 2 months x £875	£4,300

- Harry Brookes 2 months x £850 + 2 part-months £2,398.62
- Maedhbh Kelly 12 months x £801 £9,612
- Romain Ecalle 9 months, 1 week x £1,100 £10,160
- Rachel Pereira 12 months x £953 £11,436
- Redd Moore 12 months x £801 £9,612

46. The Respondents challenged these calculations for some of the Applicants:

(a) The Respondents pointed out that Mr Shorten's evidence of his payments of rent, namely excerpts from his bank statements, show that some payments were for less than £866. However, the Tribunal accepts his explanation, supported by texts between himself and Mr Manero, that deductions were made from the rent for various expenses he incurred which Mr Manero accepted should be made. Under section 52(2) of the 2016 Act, 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.

(b) Mr Shorten, Mr Ecalle and Ms Pereira each used their deposit to pay their last month's rent. In *Cox v Hussein (203 Downhills Way)* LON/00AP/HMF/ 2019/0075 Judge Carr decided that the tenants could not use their deposit in this way. However, this is not authority for the proposition that deposits may never be used this way. Nor is there anything in that case or in section 52(2) which limits any offset against the rent to arrangements subject to express agreement between the parties. In the Tribunal's opinion, the offset may extend to any entitlement to a set-off in equity or law – in *Cox v Hussein* there was no such entitlement as the tenancy expressly prohibited using the deposit in this way. In any event, the Tribunal is satisfied that Mr Manero did consent to the Applicants using their deposits to offset their last month's rent. There are plenty of texts to show he chased tenants when he thought they had not paid their rent in full whereas, when told by text that the deposit would be used in this way, he didn't comment. The Applicants said in evidence that they believed there was a general practice at the property to use deposits in this way and the Tribunal accepts they had good reason for their belief.

(c) Mr Brookes claimed a RRO calculated right up to the date of his departure on 15th September 2020. From 1st September 2020 Ms Kelly was the only other occupant of the property. Since there were only two occupants, the property ceased to be a licensable HMO and there was no longer a continuing offence under section 72(1). Mr Brookes claimed £419.17 in respect of the September period but that cannot be included in his RRO, reducing the amount of his claim to £1,979.45.

(d) The Respondents claimed that there was evidence missing for one of Ms Kelly's rent payments and for some reductions in her rent. Ms Kelly's evidence, which the Tribunal has accepted as credible, was that she paid her rent and there is no evidence that Mr Manero thought otherwise. The Tribunal is satisfied that she paid the amount claimed.

(e) There is evidence missing for 3 months of the 9 months' rent payments claimed by Mr Ecalle. His evidence, which the Tribunal has accepted as

credible, was that he paid from a bank account which he no longer has. The bank required him to attend a branch in England to obtain his statements and he could not do this from abroad where he is located. Again, there is no evidence of Mr Manero chasing him for allegedly unpaid rent. Again, the Tribunal accepts that Mr Ecalle paid his rent as claimed.

(f) Ms Pereira underpaid her rent one month by £46.50. The Applicant's reply bundle contained texts between her and Mr Manero in which he agreed to the deduction. Again, this counts as rent paid under section 52(2).

47. In considering the amount of the rent repayment orders, the Tribunal must take into account the conduct of the parties, the landlord's financial circumstances and whether the landlord has been convicted of a relevant offence. The Respondents have not been convicted of any such offence and did not put forward any evidence or submissions relevant to their financial circumstances. However, both parties referred to each other's conduct.

48. Tribunals have struggled with what conduct may be relevant and what weight to give to any relevant conduct. Despite the above-quoted comments in *Parker v Waller*, parties have tended to conduct a kind of beauty parade of the competing defaults of each party. The detailed examination of various items of disrepair or wear and tear has taken up a disproportionate amount of the hearings in which they are raised, normally to little effect. On the other hand, Judge Cooke's brief discussion of the issue of conduct in *Awad v Hooley* [2021] UKUT 0055 (LC) suggests all conduct is potentially relevant.

49. The Applicants accused the Respondents of being responsible for:

(a) A lack of fire doors;

(b) Doors having broken handles and deep holes;

(c) A lack of fire blankets – the Respondents dispute this and say that a fire blanket was retrieved from the property after they obtained vacant possession;

(d) A lack of mains-connected smoke alarms or smoke detectors, some having been removed and put into drawers – the Respondents also asserted that the smoke alarms were wired in but, in contradiction to that, also claimed that Mr Shorten had broken a smoke alarm while replacing the battery;

(e) A lack of a handrail to the steep stairs down into the basement;

(f) Holes in the floor, including one giving a view into the basement;

(g) The garden being overgrown, although Mr Hood worked on it himself and was satisfied with his efforts;

(h) A lack of doors separating the kitchen and living area from the rest of the property;

(i) Protruding screws in the hall floor;

(j) A lack of notices or inspection labels on the fire extinguishers;

(k) Windows in the living area being permanently locked and so unopenable;

(l) A leak from the shower into the kitchen, sometimes creating a slip hazard;

(m) Electrical issues due to the leak;

(n) A noxious odour of sewage in 2018 – Mr Manero speculated in texts as to possible causes of this and the leak (which Mr Evans put forward as conclusive evidence) but the problem was never definitively identified;

(o) Not being provided with a How to Rent Guide, evidence of an EICR report or an Energy Performance Certificate;

(p) A lack of any fire risk assessment; and

(q) Their deposits not being secured for significant periods.

50. In turn, the Respondents accused the Applicants of having caused damage to the property, including:

(a) A misplaced trap in the shower supposedly causing the leak into the kitchen or possibly the odour;

(b) A broken kitchen cabinet;

(c) The garden being overgrown, despite a term in each tenancy saying the tenant was responsible;

(d) A broken garden parasol;

(e) Discarded materials in the basement being a fire hazard;

(f) Failure to use the water softener, causing damage to pipes – all the Applicants gave evidence that they were unaware there was one as they had never been told of its existence.

51. Mr Evans acknowledged in his arguments that there were differences between the general law governing the relationship of landlord and tenant and the statutory regime for HMOs. However, neither he nor the Respondents acknowledged the greater responsibility imposed on those having control of or managing an HMO by the statutory regime:

(a) The Respondents relied on a lack of notice of some items, as if fire safety issues could be dealt with under the statutory regime for HMOs in the same way as breaches of the repairing covenants for matters within the demise would be considered in an action for damages. For example, the open plan nature of the kitchen relative to the rest of the property was the clearest possible breach of fire safety standards – the kitchen is the room most likely to contain the source of a fire and the open plan area would funnel smoke directly to the tenants' rooms upstairs. The fact that none of the Applicants complained about this is

entirely irrelevant. It is the responsibility of the landlords, not the tenants, to ensure fire safety.

(b) The Respondents relied on alleged failures by the Applicants to keep the common parts clean or free of debris (the basement area was full of discarded items such as boxes and a baby's high chair). However, under the statutory regime for HMOs, cleaning the common parts is the landlord's responsibility and the long-term presence of unwanted debris is far stronger evidence of a lack of appropriately active management than of negligent tenants. In any event, the particular debris in this case seemed more likely to have been left by the Respondents than to have been accumulated by the Applicants and their fellow occupants.

(c) The Respondents relied heavily on the fact that many of the issues at the property raised by the Applicants, including disrepair, ensuring appliances were in working order, securing their deposits, the provision of documents such as an Energy Performance Certificate and the management of the property, were the legal responsibility of the immediate landlord, not the head landlord such as themselves. However, the statutory regime for HMOs has made superior landlords liable for RROs and financial penalties for a reason. They have the power to decide who is to be their tenant and, if that tenant is to be a lettings company, to monitor their performance and enforce their obligations. The Respondents had the power to oversee their tenant's performance of their obligations to the sub-tenants and their failure even to put in place any provision for doing so, let alone actually doing so, means they bear a material level of responsibility for any failures of management.

52. Apart from these comments, the Tribunal was not greatly assisted by either list of alleged defaults. The defaults the Applicants were accused of were trivial and/or unproven. At least some of the Applicants' complaints were the normal incidents of the landlord and tenant relationship – disrepair issues will arise from time to time in most tenancies and most will not be relevant to the determination of an application for an RRO.

53. The Respondents argued that the amount of any RRO should be reduced to reflect their degree of culpability. While it is true that Mr Manero would bear a higher degree of responsibility for at least some of the management issues, the Respondents are just as culpable, on the facts of this case, for the lack of any licence for the property and for the deficiencies in fire safety.

54. In the circumstances, the Tribunal is satisfied that there is no basis for reducing the amounts claimed and that RROs should be made for the sums set out in paragraph 45 above, subject to the reduction for Mr Brookes, as noted in paragraph 46(c) above.

55. The Applicants also sought reimbursement of their Tribunal fees, £100 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:** 14th June 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).

Section 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.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) 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);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

Section 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.