



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

Case reference : **LON/00AG/HMF/2021/0008**

HMCTS code : **V: CVPREMOTE**

Property : **187 Fordwych Road, London NW2 3NH**

Applicant : **Redindo Felix (1)
Amor Bustamente (2)
Rosemary Burias (3)
Esperanza Ford (4)
Luz Tonido (5)
Ireno Tonido (6)**

Representative : **Alasdair Mcclenahan
Justice for Tenants**

Respondent : **James Doig (1)
Catherine Doig (2)**

Representative : **Erol Topal of Counsel**

Type of application : **Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016**

**Tribunal
member(s)** : **Judge D Brandler
Stephen Mason FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **7th June 2021**

Date of decision : **18th June 2021**

DECISION

Decision of the tribunal

- (1) The Respondents shall pay to the Applicants a Rent Repayment Order in the total sum of £34,843.00**
- (2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application.**

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

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 15th October 2020 under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order (“RRO”).
2. The application alleged that James Doig (1) and Catherine Doig (2) (“the Respondents”), had failed to obtain a licence for 187 Fordwych Road, London NW2 3NH (“the property”) in breach of the HMO licensing requirements operated by Camden Council (“The Council”). The Council inspected the property on 3rd July 2020 and confirm that the property was occupied by 9 tenants who pay rent, share bathroom and kitchen facilities and lived there as their main residence. Enforcement Notices have been served on the Respondents.
3. Directions were issued by the Tribunal on 23rd February 2021.
4. The history of the occupancy is briefly as follows.
 - (a) Room 1: Amor Bustamente (2) and Marcelo Bustamente have lived at the property since 30th January 2014.
 - (b) Room 2: Rosemary Burias (3) and Esperanza Ford (4). Rosemary Burias has lived at the property since 30th October 2014, Esperanza Ford has lived at the property since 17th May 2009.
 - (c) Room 3: Marilyn Tesico lived in room 3 with two other people. A Home Office search was carried out to find Marilyn in March 2020 and they discovered Girlie Paninebaian Gutierrez occupying the property. Room 3 remained vacant shortly after the inspection. No claim is made in relation to this room.
 - (d) Room 4: Luz Tonido (5) and Ireneo Tonido (6) have lived at the property since January 2016.
 - (e) Room 5: Redindo Felix has lived in room 5 with his wife Genalyn and their 8-year-old son since 2017.
5. None of the applicants were in receipt of a housing element of Universal Credit or Housing Benefit . The following is claimed:

- (i) Redindo Felix is seeking to recover £7,272 for rent paid for the period 15.8.2019-14.8.2020 at a rate of £606 per month
 - (ii) Luz and Ireneo Tonido are seeking to recover £9,504.06 for rent paid for the period 27.1.2019-26.1.2020. They pay £657 every 4 weeks.
 - (iii) Amor Bustamente is seeking to recover the sum of £11,436 for the period 18.7.2019-9.7.2020. She claims for herself and her husband although he is not a named party to the proceedings. She pays £406 every 2 weeks.
 - (iv) Rosemary Burias is seeking to recover £4,236 for rent paid for the period 15.1.2019-14.1.2020. She pays £353 pcm.
 - (v) Esperanza Ford is seeking to recover the sum of £5,513 for rent paid for the period 10.3.2019-9.3.2020 for rent paid at a rate of £326 every 4 weeks.
6. The Respondents let the property to Rosemary Espinosa and Victoria Lai since 2009 on annually renewed tenancy agreements for a rent of £2,600 pcm.
 7. Rosemary Espinosa and Victoria Lai sublet the property to the Applicants by annually renewed individual tenancy agreements and collect monthly rental payments from the Applicants totalling £2,920.67 per month.
 8. On 20th July 2020 a notice of seeking possession was served on Ms Amor Bustamente, Mr Marcel Bustamente, Ms Esperanza Ford, Ms Rosemary Burias, Mr Ireneo Tonido, Mrs Luz Tonido, Mr Redondo Felix and Mrs Genalyn Saet Felix. The Council served enforcement Notices on the Respondents and on Rosemary Espinosa and Victoria Lai. Further to service of those notices the Respondents made an application for a Mandatory HMO license on 3rd September 2020. The 2nd Respondent is the named license holder of the Mandatory HMO Licence with the Council and is named as the Person Managing.

THE HEARING

9. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
10. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Tribunal had the benefit of three bundles: Bundle 1, the Applicants' Bundle consisted of 127 pages with a further 22 pages of bank statements and rent books; Bundle 2, the Respondents' bundle consisting of 96 pages, with further bundle of Respondents' disclosure of 347 pages; and Bundle 3, the Applicants' response to the

Respondents consisting of 70 pages. On the morning of the hearing the Tribunal received the Respondents' skeleton argument with case law.

11. The following Applicants were present at the hearing by way of a video connection : Redindo Felix (A1), Amor Bustamente (A2), Esperanza Ford (A4) and Ireneo Tonido (A6). Rosemary Burias (A3) was not present. She works in a care home in Portsmouth and returns to the property at the weekend and so was not available. Luz Tonido (A5) had wanted to join by telephone from her work place, but this proved to be impossible to accommodate. The Applicants were represented by Mr Mcclenahan from Justice for Tenants.
12. Both the Respondents joined the hearing by video and were represented by Mr Topal of Counsel.
13. In evidence Mr Felix (A1) confirmed that he lived in a room with his wife and 8 year old son. They have lived there since 15th July 2017 and pay £606 per month in rent. His joint tenancy agreement with his wife is dated 18.07.2019 for 12 months. His wife is not a party to the proceedings. They are jointly and severally liable. He pays the rent on behalf of himself and his wife. The period for which he claims a rent repayment order is from 15.08.2019-15.08.2020.
14. Documentary evidence demonstrates Mr Felix paid £606 per month for the relevant period amounting to £7,272. He paid by bank transfer from his account ending 8960 to Virginia Lai on 2.12.19, 6.1.20, 5.2.20, 4.3.20, 6.4.20, 6.5.20, 3.6.20, 3.7.20, 5.8.19, 3.9.19, 1.10.19 and 5.11.2019.
15. He confirmed that Rosemary Espinosa and Victoria Lai manage the property and collect the rents. The only contact with them is when there were problems at the property and when they collect the rent. However, he had met Mrs Doig (R2) when she visited the property from time to time both during lockdown and prior to that.
16. It was put to Mr Felix that although he had originally stated that the witness statement were his own words, that all the witness statements of the applicants were almost identical. Mr Felix explained that it was their representatives, Justice for Tenants, who had helped them to write the statements and that they agreed to that. He confirmed the content was true.
17. This was put in cross examination to all those giving evidence.
18. Amor Bustamente (A2) was the next Applicant to give evidence. She confirmed she moved into the property in January 2014. The tenancy agreement in the appeal bundle is dated March 2019. She told the Tribunal that she asked Rosemary Espinosa and Victoria Lai for this because she needed that document to renew her husband's VISA. She thought she had previously had some tenancy agreements from them. She has not provided the evidence of bank transfers. She relies on a photocopy of her rent book as evidence of rent paid to Rosemary

Espinosa and Victoria Lai. She no longer has the original rent book as some months ago they took it from her. The explanation for that is that the book was full and they were going to give her a new one. She was asked why she would give up this book with this application pending, her response was that they asked for it. In cross examination she was challenged about the photocopy of the rent book with her name written on what appeared to be the top of her tenancy agreement. She explained that when this action was started she had sent photocopies of documents to their representatives. She was pressed on who paid the rent noted in the rent book as there was no reference to who paid it. Her response was that she always paid it to VL and sometimes she paid by bank transfer from her account but that she had not provided evidence of those payments. She confirmed the initials of the receiving party were those of VL She confirmed that the rent was inclusive. No other bills were paid.

19. Mr Ireneo Tunedo (A6) was next to give evidence. His wife Luz Tunedo (A5) was not available to be cross examined as she was working and there was no access to a laptop at work. They originally took the room in 2010.

20. Mr Tonido confirmed his witness statement and signature. His grasp of English was more limited than the other applicants, but he confirmed that he understood the questions, and he was able to confirm that the rent included gas and electricity but not internet. He did not know who paid for a TV licence.

21. The rent book that Mr Tunedo relies upon has the name of his wife on the cover. He said that at the time of that new rent book in 2016 he was not in London, but he confirmed that they both lived there and that they both paid rent. Rent is paid every two weeks alternately by Mr Tonido and Mrs Tonido to Rosemary Espinosa and Victoria Lai. This in fact equates to Mr Tonido paying £321 every 4 weeks, and Mrs Tonido paying £326 every 4 weeks. This was evidenced by their hand written rent book entries. In addition to the rent book, there is evidence of a bank transfer of £321 on 17th January “*ref Reno*” paid to VL, but there is no evidence on that document of the account holder. That document was however cross referenced to an entry dated 12.01.20 in Luz Tunedo’s rent book showing “*£321 Reno online 17.1.20*” which Mr Tonido confirmed reflected the payment he made by bank transfer. No other evidence was provided for other bank transfers.

22. The rent book provides evidence of rent paid to Virginia Lai from 13.05.2018-28.06.2020.

23. All the applicants giving evidence confirmed that the rent included bills. Other than Liz Tonido who paid an additional £15 per month for the internet.

The evidence from London Borough of Camden

24. The Final Notice to impose a financial Penalty dated 26th November 2020 addressed to Mrs Doig [274 Respondents disclosure], Jack Kane, an authorised officer of London Borough of Camden, confirms the following breaches : That *“you failed to ensure that the means of escape were kept clear of obstruction, you failed to ensure that any fire alarms were maintained in good working order and you also failed to ensure that all reasonable safety measures were in place having regard to the design, structural conditions and number of occupiers in the HMO. The fire detection system was inadequate for the size, layout and occupation of the property in that there were no hard wired detectors provided anywhere within the flat. The battery operated heat detector to the kitchen was incorrectly fitted to the wall and did not work when tested. The battery operated smoke detector to the ground floor hallway did not work when tested. The property was occupied by 9 persons living in 4 households which increases the use of kitchen facilities. The door to the kitchen was thin and contained glass panels – the door would therefore not provide the necessary 30 minutes protection from the spread of fire. The doors to both ground floor bedrooms were thin and hollow which would also not afford the required resistance to the spread of fire. The doors throughout the property were not provided with self-closing devices, intumescent strips or cold smoke seals. The bedroom doors were also fitted with key locks which may inhibit escape in the case of a fire. There were large accumulations of personal items and furniture throughout the common parts CONTRARY to s234(3) of the Housing Act 2004.”*
25. The Camden officer further confirms that 9 tenants including one child were occupying 4 bedrooms in the property with a shared kitchen, bathroom and WC facilities and that occupation required a House in Multiple Occupation (HMO) licence under the additional HMO licensing scheme. The tenants confirmed to Camden that they lived there as their only or main home, did not form a single household and paid rent to Virginia Lai and Rosemarie Espinosa by cash and electronic bank transfer.
26. The officer confirms that notices were served on Ms Lai, Ms Espinosa and Mr and Mrs Doig under section 16 of the Local Government Miscellaneous Provisions Act 1976 and that within the replies to those notices Rosemary Espinosa and Victoria Lai *“claimed that they receive £2,920.67 pcm in rental income from the tenants”*, and Mr and Mrs Doig *“have claimed that they receive £2600 pcm of this rental income from Ms Lai and Ms Espinosa”* and made a finding that the property is an HMO as defined under section 254 of the Housing Act 2004 and Catherine Anne Doig is defined as a person managing the premises under section 263(3) of the Housing Act 2004.

THE RESPONDENTS' EVIDENCE
MR JAMES DOIG

27. Mr Doig confirmed the contents of his statement was true and that he had re read his statement that morning. Mr Doig also told the Tribunal that he had some medication issues for a prostate problem that lowered his blood pressure which causes problems with dizzy spells. He said he wasn't sleeping at night and that is causing him stress. He went on to say that his memory "goes" and he can't retain things. For example he can't remember why he has gone out. His counsel asked him if he considered himself fit enough to give evidence. Mr Doig confirmed that he was. No documentary medical evidence was provided.
28. In cross examination Mr Doig said he knew nothing about HMO licencing. Since the Council's enforcement they had been forced to get a licence. Nevertheless, at various points he suggested it should have been Rosemary Espinosa and Victoria Lai who should have applied for a licence. Even though he accepted that they were not permitted to make even cosmetic changes to the property without the Respondents permission. He was aware that they renewed the tenancy annually.
29. The 2018 agreement between Mr Doig as landlord and Rosemary Espinosa and Victoria Lai as the tenants, was the only one before the Tribunal, despite several requests for full disclosure of all previous contracts by the Applicant's representative. Mr Doig could not explain why that request had not been complied with.
30. In cross examination questions were asked about that tenancy agreement and in particular in relation to the sections below
- (a) By clause A4 "Using your property"
 - (i) A4.4. "*You must not allow the property to become overcrowded*".
 - (ii) A4.5. "*If the property is not a licensed house in multiple occupation, you must not allow more people to move in so that the property will need a licence. That could mean as few as three people living in the property who are not related. Your local council can explain local laws.*"
 - (iii) A.4.6 "*if as a result of you breaking 4 and 5 of this condition, we or our agent are fined, you must pay us or our agent the amount of those fines and any reasonable legal costs we have to pay*".
31. Also the subject of questions was the clause 3, "*You must not use the property as an Airbnb*" located just before A.4 at p.5 of the agreement.
32. Mr Doig was asked when those clauses had been inserted into the tenancy agreements with Rosemary Espinosa and Victoria Lai. Mr Doig said they had been there from day one in 2009 when the first tenancy agreement. He had not asked anyone to insert clauses.
33. It was pointed out to him that he could not have envisaged in 2009 that the Council would introduce additional licensing schemes in 2015 such as was suggested by the clause relating to 3 people in the property. Nor

could he have envisaged Airbnb in a contract drawn up in 2009. Mr Doig could not answer and said he did not know and would not understand issues like that.

34. He was asked about his visits to the property which he said he had carried out about twice a year for the 10 years the property was let out. He had given access for the gas safety engineer on at least one occasion. He also confirmed that during his visits to the property he saw people in the property who he didn't know. He never asked for access to the bedrooms which were locked, he never asked who these people were, either directly or indirectly, no inspection report had been requested. He told the Tribunal "*We didn't know who anyone in house was except for Virginia. We didn't know who people were. We didn't know if they were living there.*"
35. He didn't seem sure whether he had previously seen the tenancy agreements given to the Applicants. When asked he said "not as far as I am aware".
36. He didn't know if Council Tax was paid or by whom. He said firstly that he didn't think so, he didn't know, not him personally, whether his wife paid it he didn't know, and finally "*I don't have much dealings with the house on that side. I don't know.*"
37. Throughout his oral evidence, Mr Doig either looked to his wife for assistance in how to answer, pleaded ignorance, confusion and an inability to manage paperwork as well as admitting in effect that he didn't know who was living at the house.

MRS CATHERINE DOIG

38. Having heard her husband's answers in cross examination, and having been told not to answer on his behalf on several occasions during his cross examination, Mrs Doig's had the opportunity to answer questions. However, she became vague, evasive, often monosyllabic and claimed not to understand many of the questions posed to her.
39. When asked when the clauses A4.4-6 in the 2018 tenancy agreement as set out above, seeking to indemnify her husband from any fines, her response was that she was unsure when it had been included, that it had been included at some point and that she would not be able to work out when they had been inserted unless she was to go through all of the previous contracts. When put to her that this had been requested prior to the hearing, her response was that they had sent what they could to their solicitors. When asked why they hadn't provided these she said "*have to take that up with them.*" i.e her solicitors.
40. She was asked about her statement in which she says that Camden only operate a mandatory licencing scheme, and whether she was aware of the additional licencing scheme. She said she was not sure.

41. She was asked why in her statement she says the applicants have failed to meet the necessary burden, when at the time of making the statement Mr Doig had already received a civil penalty for a breach of HMO licensing. Her response was that she was not sure of the period of time. When pressed on this point and asked “how, having paid a civil penalty for this breach could you argue that the breach did not happen” her response was “I don’t understand the question”. She further said she could not answer why Mr Doig was already on the Rogue Landlord Database.
42. Mrs Doig said she had never met any of the Applicants at the house, had never seen the tenancy agreements given to them by Rosemary Espinosa and Victoria Lai. She only dealt with Rosemary and Victoria when they called them in relation to maintenance issues, signing new tenancy agreements and receipt of rent. She confirmed she did not pay any bills for the house in relation to gas electricity or other utilities.
43. Mrs Doig’s evidence was throughout evasive, and at times obstructive.
44. At no point during evidence did either Mr Doig or Mrs Doig ever express concern in relation to the dangers faced by the applicants as a result of their failures to comply with statutory requirements for letting a house in multiple occupation. Nor did they express any regret that this had occurred. The basis of their evidence was complete denial that they had in any way been responsible for the breaches that had occurred.

FINDINGS

45. The Tribunal were satisfied beyond reasonable doubt that the Respondents were in breach of their requirement to licence the property under the HMO licensing schemes managed by the Council. The evidence is clearly set out in the findings made by the Council in their Final Notice dated 26th November 2020.
46. Therefore the only further issue for determination by the Tribunal is the amount of the RRO.
47. An argument was put forward on behalf of the respondents that they had a reasonable excuse for the breach of the licensing rules because they had handed the property to agents, and they knew nothing about the subletting. Yet this is countered by the acknowledgement by the Respondent’s counsel in submissions that there was some indication when the Respondents had visited the property and found other people there other than Rosemary Espinosa and Victoria Lai, that should have put them on notice. He explains the lack of action by the Respondents on the basis an element of not intruding on the tenants’ business, not wanting to appear to be poking around and not wanting to expose themselves to other liabilities such as breaching the covenant of quiet

enjoyment. This argument is rejected by the Tribunal. The Respondents could have inspected the property in accordance with the terms of the tenancy, and should have done so when they found strangers in the property. There can be no allegation of breach of quiet enjoyment if the tenancy is managed lawfully. In this case there was no apparent management whatsoever, to the extent that could have put the occupiers of the property in danger because of the failure to comply with the requirements of an HMO license.

48. A further argument put forward on the respondents' behalf was that their conduct was good. This was rejected by the Tribunal. The evidence from Camden Council alone indicates poor conduct by the Respondents in relation to fire safety showing no concern for the occupiers within their property.
49. There is further evidence of a notice of seeking possession issued against all the applicants on 20th July 2020. It is apparently signed by Espinosa and Lai. Whether this was at the request of the Respondents, or by Espinosa and Lai on their own volition is unknown. It is however a further indication of how poorly the applicants have been treated.
50. There was no evidence to question the applicants conduct at all.
51. It was at times difficult to reconcile the applicants' evidence in relation to the amount of rent paid by them. The presentation of the application did not help in this regard as the application claimed in one section a sum of £31,473.06 as the total amount, and in another under the schedules, claimed in excess of £35,000.
52. Having investigated the evidence of rental payments, the Tribunal found as follows for the relevant periods:
 - (i) Mr Felix paid £7,272 for himself and his family evidenced by his bank transfers.
 - (ii) Ms Buscamente paid £10,556 for her and her husband Marchello evidenced in the handwritten rent book.
 - (iii) Esparanza Ford paid £4,238. The Tribunal preferred the evidence as set out in the application stated to be £81.50 per week as opposed to the schedule.
 - (iv) Ireneo Tunedo paid £4,173 evidenced by the bank transfer and the cross referencing to the handwritten rent book, which is consistent with his claim that he and his wife alternated their payments, with his payment being £321, and her payment being £326
 - (v) Luz Tonedo paid £4,368 evidenced by the rent book and from her husband's oral evidence

- (vi) Rosemary Burias paid £4,326. Although she was not available to be cross examined during the hearing, the Tribunal found her claim to be consistent with her sharing a room with Esperanza Ford, and a similar amount being claimed by each of them.
 - (vii) Also persuasive was the Notice of Seeking possession dated 20th July 2020 addressed to all the Applicants from Rosemary Espinosa and Victoria Lai which clearly recognises the Applicants as tenants. Also persuasive is the statement to the Council by Rosemary Espinosa and Victoria Lai that they that they were in receipt of £2,920.67 pcm in rental payments from the occupiers of the property.
53. The Tribunal considered the Respondents' submission about financial difficulties. The only evidence provided was a bank statement for an account with a £70,000 overdraft facility into which the Rosemary Espinosa and Victoria Lai paid £2,600 pcm. The Tribunal did not consider that evidence of a £70,000 approved overdraft indicated that the couple had financial difficulties.
54. In response to the Respondent's counsel's submission that the claim had been invalidly constituted because neither Mrs Felix or Mr Bustamente were named Applicants, this is rejected by the Tribunal. The Tribunal finds that Mr and Mrs Felix, and Mr and Mrs Buscamente were jointly and severally liable for the rental payments.
55. Similarly his argument that CPR 19.3 is rejected as not relating to this type of claim in the Tribunal, the Tribunal having its own procedure rules.
56. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the evidence of the landlord's conduct, we consider that the award should not be reduced. Accordingly, we find that an RRO should be made against the Respondents in the full sum sought £34,843.00 which should be paid to the Applicants.
57. The Respondent is also ordered to pay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Tribunal Judge Brandler **Date:** 18th June 2021

APPENDIX

| Applicant | Period of claim | Rent paid | RRO AWARDED |
|--------------------|------------------------|--|--------------------|
| Mr R Felix | 15/08/2019-15/08/2020 | £7272.00 | £7272.00 |
| Luz Tonido | 27/01/2019-27/01/2020 | £4368 £336 paid every 4 weeks £84.00 pw | £4368. |
| Ireneo Tonido | 27/01/2019-27/01/2020 | £4173 £321 paid every 4 weeks £80.25 pw | £4173 |
| Amor Bustamente | 18/07/2019-09/07/2020 | £10,556 £203 pw | £10,556 |
| Rosemary Burias | 15/12/2018-15/12/2019 | £4,236.00 £353 pcm | £4,236.00 |
| Esperanza Ford | 10/03/2019-10/03/2020 | £4238 £326 paid every 4 weeks £81.50 pw | £4238 |
| TOTAL | | | £34843 |

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Housing Act 2004

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.

(8) 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.

(9) 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.

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

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
- (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

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

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