FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/HMF/2020/0264**
HMCTS code	**:**	**V: VIDEO**
Property	**:**	**21 Myrdle Court, Myrdle Street, London E1 1HP**
Applicants	**:**	**Antzelo Bellai, Justina Ivoskaite; Julian Kisselevits, Luke Telkamp**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Myrdle Court Holdings Limited**
Representative	**:**	**Mr Malik Masrur, director of the Respondent**
Type of application	**:**	**Application for a Rent Repayment Order by tenants** Sections 40, 41, 42, 43 and 45 Housing and Planning Act 2016.
Tribunal members	**:**	**Judge Pittaway** **Ms F Macleod MCIEH**
Date of Hearing	**:**	**15 June 2021**
Date of decision	**:**	**21 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were in an applicant's bundle of 182 pages, an unpaginated bundle from the respondents and a response from the applicants of 141 pages the contents of which the tribunal has noted.

At the hearing Ms Sherratt of Justice for tenants represented the Applicants, and Mr Malik spoke for the Respondent.

The tribunal heard evidence from Mr Bellai (on behalf of himself and Ms Ivoskaite) and Mr Kisselevits. There was also a witness statement of Mr Telkamp in the bundle. The tribunal also heard evidence from Mr Malik on behalf of the Respondent.

The tribunal heard submissions from Ms Sherratt on behalf of the Applicants and from Mr Malik.

Decisions of the tribunal

1. **The Tribunal make a Rent repayment Order against the Respondent in the sum of £7598.95**

2. **The Tribunal orders that the Respondent reimburse the Applicants with its application and hearing fees in the sum of £300.**

The background

3. The tribunal received an application dated 19 November 2020 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order in respect of 21 Myrdle Court, Myrdle Street London E1 1HP('the **Property**').

4. On 11 March 2021 the Tribunal issued Directions, which were amended on 16 March 2021. The Directions provided for the Applicants to provide a bundle to the tribunal by 17 May 2021 and for the Respondent to provide a bundle to the Tribunal by 7 June 2021.

The Issues

5. At the start of the hearing Ms Sherratt submitted that

   - it was agreed that the property was unlicensed between 6 May 2020 and 21 October 2020; and
   - The amount of the rent paid during that period by the Applicants was not disputed.

6. Mr Malik confirmed that these issues were agreed.

7. The issues before the tribunal to determine were

- Did the Respondent have a reasonable excuse for committing an offence under section 95(1) of the Housing Act 2004 (the **'2004 Act'**), namely
- The maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
- Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

The Property

8. The Property is described in the application as a one storey 3-bedroom self-contained flat. During the course of the hearing the tribunal heard evidence that the property had 3 bedrooms, the living room having been converted into a bedroom, and that the kitchen and bathroom were shared.

9. No party requested an inspection and the tribunal did not consider that one was necessary.

10. The table below sets out the sums claimed by the respective Applicants

Tenant	Period	Rent claimed
Mr Bellai and Ms Ivoskaite	6 May 2020 to 14 September 2020	£3,411
J Kisselevits	29 May 2020 to 21 October 2020	£3,450
L Telkamp	18 September 2020 to 21 October 2020	£923.39

11. The tribunal heard evidence that the sum of £3,411 does not include the universal credit received by Mr Bellai of £373.

12. The relevant local housing authority is Tower Hamlets. The property is situated within a selective licensing area designated by the London Borough of Tower Hamlets which came into force on 1 October 2016 for a period of 5 years applicable to the Council ward areas of Weavers, Spitalfields and

Banglatown (pre 2014 boundaries). The selective licensing applied to any house 'which is let or occupied under a tenancy or licence' within those areas. The property does not fall within any of the exemptions set out in the designation. The property had an HMO licence until 6 May 2020 when the selective licence was revoked.

13. Myrdle Court Holdings Ltd are the freeholder. The property was let by the Respondent's predecessor in title, Hollow-Ware Products Limited, under an 'Assured Shorthold Tenancy Agreement' dated 11 December 2018 to Baccari Ltd ("**Baccari**")for a term to 12 December 2019 at a monthly rent of £1,600.

14. The Respondent purchased the freehold on 6 May 2020 subject to the Beccari tenancy. The tribunal heard evidence that Baccari Ltd remain the Respondent's immediate tenant at the same rent.

15. The bundle contained copies of 'Licence Agreement- Room' for each of the applicants (one for Mr Bellai and Ms Ivoskaite) naming the Licensor as Baccari Ltd.

Evidence and submissions

Offence and reasonable excuse

16. Ms Sherratt referred the tribunal to official copy entries from the Land Registry as evidence that the Respondent is the freeholder of the property.

17. Ms Sherratt submitted that the Respondent was a 'person having control' of the property within the definition contained in section 263 of the 2004 Act in that it received a rack rent for the property. Ms Sherratt referred the tribunal to *Rakusen v Jepsen* [2020] UKUT 0038 (LC) for her submission that there can be more than one person receiving rack rent, and more than one person 'in control' for the purposes of section 263(1) of the 2004 Act. She referred the tribunal to paragraph 59 of that case in support of her submission that a superior landlord can be a 'person in control'.

18. Mr Malik submitted that the more appropriate person against whom to seek an RRO was Baccari Limited as it was that company that had let the property as rooms. The Respondent had had no direct dealings with the Applicants. Mr Malik gave evidence that when the Respondent bought the block of flats its solicitors had undertaken due diligence but this had been limited to verifying the basis upon which the flats were let and the amount of rent being paid, as the property was being bought as an investment. The solicitors had not investigated whether the flats were occupied in breach of the agreements under which they were let, as is the case with Flat 21. He confirmed that no inspection reports had been obtained. Mr Malik agreed that the form of licence agreement under which each of the applicants occupied the property was unfair, and that they should be regarded as tenants not licensees, but the agreements had not been provided to the Respondent as part of the due

diligence exercise at the time of the purchase. He confirmed that Baccari Limited remained the Respondent's tenant at the property, and that this was the only flat in the block of which Baccari was the Respondent's immediate tenant. He did not consider the Respondent had grounds to terminate its agreement with Baccari and even if it did it would still be left with the occupants who could not be evicted during the pandemic.

19. Mr Malik submitted that the Respondent had a reasonable excuse for committing the offence. It had been unaware that the previous selective licence for the property had been revoked when the whole of the block of 28 flats had been sold to the Respondent. Mr Malik gave evidence that this had only come to the Respondent's attention on 30 June 2020 following a visit by its managing agent to Flat 19 which had become vacant. Mr Malik gave evidence that the reason the application for the licence was not submitted until 21 October 2020 was because the surveyor instructed was unable initially to undertake the necessary inspection of all the flats in the block to draw up the required floor plans and measurements of each habitable room by reason of the pandemic as during lockdown he was not allowed to enter occupied properties. After lockdown there was a backlog of work. Mr Malik gave oral evidence that he had contacted other surveyors to see if they could undertake the job more quickly but that no one was able to because of the size of the job, namely preparing plans and measurement of 28 flats.

    Mr Malik gave evidence that the respondent had not made the necessary application to the local housing authority sooner because in his experience any such application without the necessary plans would be rejected by the local housing authority. Before 21 October 2020 the Respondent had not corresponded with the local housing authority because it knew it needed to submit plans for 28 flats with the application. For the same reason it had not sought to apply for a Temporary Exemption Notice.

20. Ms Sherratt submitted that the Respondent did not have a reasonable excuse. The Respondent had provided no evidence of having communicated with other surveyors and the Respondent had not communicated with the council on the difficulty of obtaining plans.

Amount of the RRO

21. Ms Sherratt referred the tribunal to paragraphs 12 and 47 of *Vadmalayan v Stewart* [2020] UKUT 0183 (LC) (***'Vadamalayan'***) as authority for the proposition that the starting point for any RRO is the amount of rent paid.

22. Mr Malik invited the tribunal to have regard to various outgoings incurred in relation to the property and submitted that these should be taken into account in determining the maximum amount of the RRO. He referred the tribunal to the utility bills paid by Baccari in relation to the flat, including council tax and water rates, and to the costs incurred by the Respondent, in maintenance and cleaning the communal parts, block lighting and the lift electricity bill, the lift maintenance and cost of CCTV. He also referred to the possibility of allowing

the use of the furnishings provided by the Respondent as a deductible cost, referring the tribunal to the decision in *Vadamalayan* for this proposal where the FTT deducted 25% from the claim.

23. Ms Sherratt referred the Tribunal to paragraph 53 of *Vadamalayan* as authority for her submission that where it was Baccari and not the Respondent that paid for the utilities the Respondent could not seek to have these deducted from the amount of the RRO. This paragraph is also her authority for submitting that costs incurred by the Respondent were costs incurred by it in running the block including the property incurred in performance of its obligations as a landlord and were costs incurred in meeting one obligation that should not be deducted from what he has to pay to meet another.

24. Ms Sherratt then referred the tribunal to section 44(4) of the 2016 Act which sets out the factors which the Tribunal in particular should have regard to in determining the amount of the RRO. The Respondent had no convictions so that the issues for the tribunal to consider were the conduct of the parties and the financial circumstances of the landlord. These are the areas where the Tribunal may exercise its discretion. The Tribunal does not have discretion to reasonableness or proportionality.

25. As to the financial circumstances of the Respondent Ms Sherratt submitted that the only evidence before the tribunal was the mortgage statement in the Respondent's bundle. There was no evidence before the tribunal as to the amount of rent which the Respondent received. Mr Malik stated that the rents for the flats ranged between £1,100 and £1,600. Ms Sherratt reminded the tribunal of paragraph 10(f) of the Directions which directed that the Respondent's bundle should include a statement of circumstances that could justify a reduction in the maximum amount of the RRO, submitting that the Respondent had not done this. Ms Sherratt referred the Tribunal to paragraph 56 of *Vadamalayan* as authority for her submission that it is not sufficient for the Respondent only to provided evidence about the rent received, better evidence of the Respondent's financial circumstances than that is required.

26. Ms Sherratt submitted that there had been poor conduct on the part of the Respondent in that it had omitted to check who was actually occupying the property, it had not inspected and it had not terminated its agreement with Bacarri despite it being in breach of its obligations under its agreement, suggesting that there must be a close working relationship between the two companies for the respondent to have obtained invoices from Bacarri. Ms Sherratt also referred to the Respondent not having complied with the Directions. Ms Sherratt submitted there was no reason to justify reducing the award by reason of the respondent's conduct.

27. Neither Ms Sherratt nor Mr Malik made submissions as to the good or bad conduct of the Applicants. Mr Malik during the hearing on several occasions made the point that he had not had direct contact with the occupants.

The tribunal's decision and reasons

28. The tribunal has had regard to the witness statements in the bundle, the submissions made at the hearing and the decisions referred to during the Hearing in reaching its decision.

As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision. It has limited references to the cases referred to in its reasons to those most pertinent to its decision.

The Respondent's 'Response to the alleged offence' in the bundle before the tribunal did not identify who was making the response, when it was made and did not contain a statement of truth. Mr Malik confirmed that it was his statement, that he believed it should be dated with the date on which he had to submit the Respondent's bundle to the tribunal (which he said was 17 May 2021). Ms Sherratt agreed that in the circumstances it could be treated as a witness statement and she cross-examined Mr Malik on it.

29. The relevant legal provisions are set out in the Appendix to this decision

Offence and reasonable excuse

30. Section 95(1) of the 2004 Act provides, 'A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed'.

31. It was accepted by the Respondent that the property was not licensed during the period 6 May to 21 October 2020 so that an offence was being committed during that period.

32. The tribunal had before it evidence that the Respondent had received rent from Baccari Limited, who had rented the property from its previous freeholder Hollow-Ware Products Limited on 11 December 2018 for a term expiring on 12 December 2019 at a monthly rent of 1600 per calendar month.

33. Section 263(1) provides that a person who receives the rack rent of a property has control of it Section 263(1). The Tribunal find that a rent of £1600 is a rack rent for the property. The decision in *Rakusen* confirmed that an application for an RRO could be made against a superior landlord despite the applicants never having been in a landlord/tenant or licensor/licensee relationship with that person.

The tribunal accordingly find that the Respondent committed the offence of being in control of premises which were required to be licensed under Part 3 of the 2004 Act but which were not so licensed.

34. Section 95(4) of the 2004 Act provides that in proceedings against a person for an offence under section 95(1) of the 2004 Act it is a defence that that person had a reasonable excuse.

35. It is for the Respondent to prove on the balance of probability that it had a reasonable excuse and the tribunal find that it has not done so.

The tribunal accept that the Respondent was initially unaware that the sale of the freehold to it had the effect of terminating the selective licences. Section 91(6) prohibits the transfer of a licence from one person to another. The tribunal also accepts that the Respondent may have had difficulty in finding a surveyor to carry out the necessary survey and provide the necessary measured plans required to be submitted with the licence application.

However the Tribunal does not find that either of these excuses can be considered to be reasonable for the purposes of section 95(1) of the 2004 Act. By his own admission Mr Malik knew of the need for selective licences and therefore it is reasonable to assume that he should have known that the acquisition of the freehold terminated the licences. The tribunal accept that it would not have been possible for the valuer to enter occupied flats during lock-down and has every sympathy with, and accepts, the difficulties that Mr Malik had in finding a valuer to undertake the necessary work on 28 flats immediately after the end of lock-down. The tribunal finds that the Respondent might have had a reasonable excuse had it attempted to contact the local housing authority to explain its difficulties but it made no attempt to do so before it made the application on 21 October 2020.

The maximum amount of any RRO.

36. The Tribunal believe that Mr Malik had overlooked that the decision of the First-tier Tribunal in *Vadamalayan* had been altered by the decision on appeal to the Upper Tribunal. The tribunal agree with Ms Sherratt's submission that following *Vadamalayan,* the starting point for determining the amount of the RRO is the rent paid. The decision in the Upper Tribunal limited possible deductions from the maximum amount to utilities paid for by the landlord.

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

practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.'

37. Ms Sherratt has submitted that the tribunal should ignore those utilities paid for by Baccari because the Respondent did not pay these, and that it should not deduct the amounts in the invoices paid by the Respondent as these relate to repair or enhancement of the landlord's property, enabling him to charge rent, or required to comply with its obligations under letting agreements.

38. The tribunal find that, following *Varamalayan* the sums incurred by the Respondent are not deductible from the maximum amount of the RRO.

39. The tribunal do not accept Ms Sherratt's submission that because the utilities were paid by Baccari they cannot be deducted from the maximum amount of the RRO. It finds that if the Tribunal accepted this submission it would be allowing the tenants of the property to receive more by way of repayment than a tenant whose rent did not include utilities and paragraph 16 of *Vadmalayan* makes clear that this would be unfair. Accordingly the tribunal find that the following utility costs may be deducted from the maximum amount.

Mr Bellai and Ms Ivoskaite £79.91

Mr Kisselevits £85.40

Mr Telkamp £20.13

The tribunal have not allowed deduction of council tax nor water rates as these are fixed sums not dependent upon the amount that the tenant has consumed.

The maximum amount of the RRO is therefore £7598.95, made up as follows;

Tenant	Period	Rent claimed with utilities deducted
Mr Bellai and Ms Ivoskaite	6 May 2020 to 14 September 2020	£3,331.09
J Kisselevits	29 May 2020 to 21 October 2020	£3,364.60
L Telkamp	18 September 2020 to 21 October 2020	£903.26

Relevant conduct and the landlord's financial circumstances

40. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.

41. It was accepted that the landlord had not at any time been convicted of a relevant offence.

42. The Tribunal find that the Respondent submitted insufficient evidence for it to be able to take its financial circumstances into account.

43. The Tribunal agree with both parties that the conduct of Baccari was poor but that is not relevant to its decision. It is not possible for the Tribunal to increase the amount of the RRO beyond the maximum, as confirmed in the decision in *Ficcara v James* [2021] UKUT 0038 (LC) so that Ms Sherratt's submissions as to the poor conduct of the Respondent cannot increase the amount of the RRO. The Tribunal note the submissions made by Ms Sherratt as to the Respondent's bad conduct but because there was no direct relationship between the Applicants and the Respondent find there was little evidence from either party as to the good or bad conduct of the other. No adjustment is therefore made for the conduct of either party.

Fees

44. Ms Sherratt submitted that the Applicants should have their fees of £300 paid to the tribunal in connection with the application and hearing refunded. In the circumstances. The Tribunal do not find that success in the application automatically entitles the Applicant to the refund of its fees, however it finds in this present case that it is appropriate that the Respondent should reimburse the Applicants their fees of £300.

Name: Judge Pittaway **Date:** 21 June 2021

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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

Appendix of Relevant Legislation

Housing Act 2004

80 Designation of selective licensing areas

(1)A local housing authority may designate either—

(a)the area of their district, or

(b)an area in their district,

as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

85 Requirement for Part 3 houses to be licensed

(1)Every Part 3 house must be licensed under this Part unless—

(a)it is an HMO to which Part 2 applies (see section 55(2)), or

(b)a temporary exemption notice is in force in relation to it under section 86, or

(c)a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

91 Licences: general requirements and duration

(3)A licence—

(a)comes into force at the time that is specified in or determined under the licence for this purpose, and

(b)unless previously terminated by subsection (7) or revoked under section 93 continues in force for the period that is so specified or determined.

(6)A licence may not be transferred to another person.

95 Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2)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 90(6), and

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

(3)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 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4)In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

263 Meaning of "person having control" and "person managing" etc.

(1)In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

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

(3)In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—

(a)receives (whether directly or through an agent or trustee) rents or other payments from—

(i)in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

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

(b)would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

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

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

Housing and Planning Act 2016

40 Introduction and key definitions

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

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

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

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

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

	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).

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.

(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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a)inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b)state the amount that the authority seeks to recover, and

(c)invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a rent repayment order

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

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

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

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

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.