FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BD/HMF/2020/0268** **CVP Remote**
Property	**:**	**201 Mortlake Road, Richmond, Surrey TW9 4EW**
Applicants	**:**	**Sunil Singh** **Manpreet Harbias**
Representative	**:**	**In person**
Respondents	**:**	**Kaya Kuatois**
Representative	**:**	**In person**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mel Cairns (Professional Member) MCIEH**
Venue and date of hearing	**:**	**By a video hearing on 18 June 2021**
Date of decision	**:**	**22 June 2021**

DECISION

Decision of the tribunal

(1) The Tribunal finds that a rent repayment order be made in the sum of £4500 in favour of the applicants, the Tribunal being satisfied beyond reasonable doubt that the respondents have committed an offence pursuant to s.72(1) of the Housing Act 2004, namely that a person

commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

(2) The tribunal determines that there be an order for the refund of the application fees in the sum of £300 pursuant to Rule 13(2) of the Tribunal Rules.

Reasons for the tribunal's decision

Introduction

1. The applicants made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as 201 Mortlake Road, Richmond, Surrey TW9 4EW This was originally a 5-bedroom semi-detached house with a living room recently converted into a bedroom.

2. 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.

3. The hearing of the application took place on Friday 18 June 2021. The applicant appeared in person as did the respondent.

4. By Directions made by Judge Latham and dated 2 March 2021 the respondent was directed to provide to the Tribunal and the applicants by email their Bundle of Documents in respect of the Application for a Rent Repayment Order by 27 April 2021. The Tribunal did not receive any bundle from the respondent. The applicants also received no Bundle from the Respondent.

5. The Tribunal received initially no response from the email provided by the Applicants for the Respondent, and subsequently the emails began to 'bounce back'. Attempts at postal communication was returned to the Tribunal office marked 'gone away' from the address provided. The Tribunal therefore required the Applicants to provide updated contact details for the Respondent, which they did on 26 March 2021.

6. The Tribunal provided all documents (including the Application and Directions) to the updated contact details for the Respondent on 29 March 2021, and on 31 March 2021 the Respondent contacted the Tribunal to assert she was a tenant and not a landlord to whom the RRO legislation could attach.

7. On 25 April 2021 the Applicants wrote to the Tribunal to complain that the Respondent had been contacting their witnesses. Email and messaging conversations from 13 and 17 April 2021 were attached, in which it was clear that the Respondent was aware of witness statements given in evidence.

8. No Respondents bundle was received from the Respondent on or by 27 April 2021. Consequently, the Tribunal was minded to bar the respondent from participation in the proceedings on grounds that she had failed to comply with the Tribunal's Directions. Written representations on the question whether the application should be struck out were requested. Thereafter the respondent failed to comply with the Tribunals directions or at all.

9. On 30 April 2021 Judge Hawkes therefore caused the following warning to be sent to the Respondent:

*1. Unless by **4 pm on 11 May 2021** the Respondent:*

*a. Fully complies with paragraphs 11 and 12 of the Directions dated 2 March 2021, **and***

b. provides a written statement, supported by evidence, giving the reasons why they failed to comply with those Directions and explaining why the Tribunal should not debar the Respondent from further participation in these proceedings and go on to determine all issues against the Respondent,

the Respondent may be debarred from further participation in these proceedings and the Tribunal may go on to determine all issues against the Respondent without further order pursuant to rules 9(3)(a),(b), (d) and (e); 9(7) and (8) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013.

10. On 11 May 2021 the Tribunal received from the Respondent an email entitled '*Urgent adjournment request and extension of time in relation to court directions and legal representation, 42 days*.' In it, the Respondent asserted that she was a litigant in person who did not understand what to do in order to protect herself. She reiterated that she was a tenant and not the Landlord of the property. She required a 42-day extension to obtain lawyers in order for them to help her. In particular the Respondent asserted: "I have approached the bar pro bono unit, the citizens advice bureau and the local law centre. I am waiting to hear back from them to help me respond to these things that the court requires."

11. On the same day, the Respondent was asked to provide evidence that she had contacted the organisations identified.

12. The Respondent provided a series of emails, in which it is clear that she contacted a solicitor's firm (Samuel Louis) and the Bar Pro Bono Unit on 30 April 2021, and then on 19 May 2021, as well as 'Adviceline' on or around 10 May 2021 (who then provided contact details for CAB). In none of the evidence is it evidenced that any contact with external organisations was made until after Judge Hawkes' warning letter.

13. The email of 11 May 2021 does not meet the requirements set down in the Tribunal's warning letter of 30 April 2021. Nor is there sufficient evidence that the Respondent has made efforts to contact lawyers or assistance when she became aware of proceedings. It is noted that the Tribunal sent to her a list of advice organisations that might be able to assist her, with the documents sent to her on 29 March 2021.

14. There is no explanation for the Respondent's failure, as appears from the evidence, to do anything (save for contact the witnesses to complain) to prepare her case between 31 March 2021 (when she first contacted the Tribunal) and 30 April 2021.

15. On 17 May 2021 Judge Carr issued an unless order requiring the respondent to comply with Directions by 28 May 2021. She failed to do so. The unless order stated "**Unless by 4pm on 28 May 2021 the Respondent does comply with paragraphs 11 and 12 of the Directions of 2 March 2021, she will be automatically debarred from the proceedings without further order**, and the Tribunal will go on to determine all matters against her pursuant to rule 9(1), (3)(a), (7) and (8) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules.". Just prior to the hearing the respondent made an application for the bar to be lifted and to be permitted to participate in the proceedings. Therefore, at the start of the hearing the Tribunal again listened to the respondent as to why she thought the bar should be lifted. In essence she had encountered problems with her Aunt at the time the bundle was required, she was on her own as a single parent, she was signed off sick and had problems uploading documents. She was also unrepresented. She also thought the pandemic had adversely affected her.

16. After careful consideration of her application and the respondent's comments in reply and in the light of Rule 3 of the Tribunal Rules (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules; 2013 No. 1169 (L. 8)) it was decided that the bar should not be lifted. The Tribunal decided that to ensure that the case was dealt with fairly and justly the respondent should not be allowed to participate further. She had been given ample and prolonged time to comply with the Directions but had failed to do so for any convincing reason. Consequently, the respondent remained an observer of the video hearing and heard and saw everything that occurred but did not participate. The Tribunal did confirm that that it would however

consider such written material as the respondent had provided, not least because this was largely reproduced in the applicant's bundle.

17. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

18. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice CVP platform 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 documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the applicants, in accordance with previous directions.

19. The applicants are the former occupants of part of the property. The applicants signed tenancy agreements in regard to part of the property. The applicants believe that the respondent was their landlord. They believed they paid rent to her and the first contact made when the tenancy was started was with the respondent. They also, during the tenancy, raised any issues about their tenancy with the respondent.

Background and the law

20. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the Tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that a person/company has committed an offence described in Part three of the Act and in that regard section 72 of the 2004 Act states: -

> *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

21. Every property to which Part 2 of the Act applies must be licensed (s.61(1) Housing Act 2004). As stated at s.61 (1) of the 2004 Act:

> *(1) Every HMO to which this Part applies must be licensed under this Part unless—*
>
> *(a)a temporary exemption notice is in force in relation to it under section 62, or*
>
> *(b)an interim or final management order is in force in relation to it under Chapter 1 of Part 4.*
>
> *(2)A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.*

22. The meaning of a "person having control" and "person managing" is provided by s.263 of the Housing Act 2004. "Person managing" is defined at subsection (3) as:

> *"[…] the person who, being an owner or lessee of the premises —*
>
> *receives (whether directly or through an agent or trustee) rents or other payments from—*
>
> *(i) in the case of an HMO, persons who are in occupation as tenants or licensee of parts of the premises;*
>
> *(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;*
>
> *would so receive those rents or other payments but for having entered into an arrangement […] 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."*

23. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made on 14 December 2020. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

24. The amount of the rent repayment order is the sum of £4500 for the rent paid relating to the period of 23 July 2020 until 21 December 2020 when the applicants left the property. The applicants also supplied to the Tribunal proof of payment shown in the trial bundle. The Tribunal were satisfied that these payments had indeed be made.

The Offence

25. The applicants produced to the Tribunal a copy of the register of licensed properties in Richmond. This property was not on the list. Therefore, the property was apparently unlicensed. An HMO is a house or flat which is occupied by three or more people forming two or more households, which means that at least one of the occupiers is not related to the others (two if the owner lives in the property with them). To be an HMO some facilities must be shared, such as a toilet, bathroom or kitchen. In other words, the occupiers do not have these facilities self-contained within their personal accommodation. The Tribunal heard evidence that apart from the applicants, the respondent and her child lived at the property as did several other tenants who came and went during the period of the claim. The Tribunal were satisfied that three or more people occupied the property in two or more households during the period of the rent repayment claim and that facilities were shared. The property will only become Licensable under s.55 of the Act if there are 5 or more people in 2 or more households. The Tribunal was satisfied that these conditions were fulfilled.

26. There being a "house" as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed. The respondent has therefore committed an offence under section 72 (1) of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property. The Tribunal relies upon the Upper Tribunal decision in the case of *Goldsbrough and Swart v CA Property Management Ltd and Gardner* [2019] UKUT 311(LC) in making this finding.

27. In the Upper Tribunal Judge Elizabeth Cooke found that where the alleged offence is controlling or managing an unlicensed HMO, a rent repayment order can only be made against a landlord of the property in

question. While a managing agent cannot be a landlord, she concluded that the definition of a landlord, for the purposes of the 2016 Act, included both the tenants' immediate landlord and the freehold owners of the property The order does not need to be made against the 'immediate landlord' of the tenants of the property. Rather, it can be made against any person who is "a landlord of the property where the tenant lived" (*Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC) at [32]-[33]).

28. To assist I quote some paragraphs of Judge Cooke's decision: -

> *"31. I also agree that a managing agent that does not have a lease of the property cannot be a landlord. If that is what the government guidance, quoted at paragraph 23 above, is intended to say then it is correct. But if it is intended to say that an intermediate lessee, who is the landlord of the applicants but the sub-tenant of the freeholders (or indeed of another superior lessee) cannot be subject to an RRO than that would appear to be incorrect and misleading. It would be very helpful for that guidance to be clarified.*
>
> *32. Where I part company with the FTT is in its restriction of liability to an RRO to "the landlord" of the occupier. That is not what the 2016 Act says. The only conditions that it sets for liability to an RRO are, first, that the person is "a landlord" and second that that person has committed one of the offences. Certainly the person must be a landlord of the property where the tenant lived; section 41(2)(a) requires that the offence relates to housing that, at the time of the offence, was let to the tenant. It does not say that the person must be the immediate landlord of the occupier; if that was what was meant, the statue would have said so.*
>
> *35. If the only possible respondent were the landlord who held the immediate reversion to the tenant, it would be possible for a freeholder to set up a situation where a rent repayment order could not be made, by first granting a lease of the property to a company that is not in control of, nor managing, the property and is ineligible for an HMO licence, and then having that company grant the residential tenancies…."*

29. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application. There were no submissions or other evidence of a reasonable excuse for not having applied for a licence. Accordingly, the tribunal had no alternative other than to find that the

respondent was guilty of the criminal offence contrary to the Housing Act 2004.

The tribunal's determination

30. The amount of the rent repayment order was extracted from the amount of rent paid by the applicants during the period of occupancy as set out within the trial bundle where the rents actually paid were fully stated. The amounts are set out in this decision at paragraph (1) above. The sum represents the maximum sum, (£100%), that might form the amount of rent repayment orders.

31. In deciding the amount of the rent repayment order, the Tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the Tribunal consider an appropriate order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the first respondent was not a professional landlord as it had no evidence to say otherwise. As was stated in paragraph 26 of *Parker: -*

> "*Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.*"

32. Having said that, when considering the amount of a rent repayment order the starting point that the Tribunal is governed by is s.44(4), which states that that the Tribunal must "in particular, take into account" three express matters, namely:

> (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.

The Tribunal must therefore consider the conduct of the parties and the financial circumstances of the respondent. Express matter (c) was not

considered as no such convictions apply so far as the two respondents are concerned.

33. The Tribunal were mindful of the recent Upper Tribunal decision in *Vadamalayan v Stewart and Others* [2020] UKUT 183 (LC). In particular Judge Elizabeth Cooke said: -

> *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.*
>
> *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.*
>
> *53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in Parker v Waller. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. The appellant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the appellant's own obligations as landlord. The respondents as tenants were entitled to the items set out in the appellant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the appellant spent in meeting one obligation from what he has to pay to meet the other.*

> *54. The appellant also wants to deduct what he had to pay by way of mortgage payments to the TSB and interest on another loan which has not been shown to relate to the property. The FTT refused to deduct the mortgage payments because the mortgage was taken out in 2016 whereas the property was purchased in 2014, so that the mortgage did not appear to have funded the purchase. The appellant says that the property was bought some years before that and that this was a re-mortgage. He did not produce evidence about that to the FTT and he could have done so. More importantly, what a landlord pays by way of mortgage repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order. The other loan has not been shown to relate to the property and I regard it as irrelevant, as did the FTT.*

34. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order. The tribunal could not see any justification for a deduction for any outgoing. The conduct of the respondent did not seem to justify this allowance. The respondent had simply failed to engage in any meaningful way with these Tribunal proceedings.

35. However, as has been observed quantum of any award is not related to the profit of the respondent, following *Vadamalayan*. The only expense deductions that may be allowed, at the discretion of the Tribunal, are for utilities paid on behalf of the tenants by the landlord. It can be argued that council tax is a fixed cost of the landlord, also payable when the property is empty. It is not "consumed at a rate the tenant chooses" (*Vadamalayan*, §16), as per utilities and should not be an allowable expense. The Tribunal agrees with this assessment of the relevance of this outgoing. In any event details of this and other expenses were not submitted so in the absence any witness before the Tribunal to give evidence on behalf of the respondent, the Tribunal was unable to take into account these items.

36. The Tribunal then turned to the matter of the conduct of the parties. The landlord should have licenced this property but did not. This is a significant factor in relation to the matter of conduct. It remains the case that this property should have been licenced and regrettably it was not.

37. The applicants asserted that the Applicants' deposits were not protected in a government approved scheme. This is a breach of Section 213 of the Housing Act 2004. The Tribunal accepts that this failure to deal with the rent deposit properly should be taken into account when

considering the amount or level of the rent repayment order necessary in this case.

38. Furthermore, there was a distinct lack of engagement with the Tribunal on the part of the respondents such that debarring proceedings arose. The failure of the respondents to comply with the directions of the Tribunal is aggravating conduct. The respondent made a very late response just before the hearing, despite repeated valid service of documents upon her.

39. Consequently, while the Tribunal started at the 100% level of the rent it thought that there were no reductions that might be appropriate, proportionate or indeed necessary to take account of the factors in the Act. Therefore, the Tribunal decided particularly in the light of the absence of a licence that there should be no reduction from the maximum figures set out above giving a final figure of 100% of the claim. This figure represents the Tribunals overall view of the circumstances that determined the amount of the rent repayment order.

40. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £4500. The order arises as a consequence of the Tribunal being satisfied beyond reasonable doubt that the respondent had committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a person/company having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed.

41. The applicants have applied for an order that their Tribunal fees be refunded to them. Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No 1169 (L.8) does allow for the refund of Tribunal fees. Rule 13(2) states that "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*"

42. There is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate and proportionate in the light of the determinations set out above that the respondent refund the Applicants' Tribunal fee payments of £300. In the circumstances the tribunal determines that there be an order for the refund of the application fees in the sum of £300 pursuant to Rule 13(2) of the Tribunal Rules.

Name: Judge Professor Robert Abbey Date: 22 June 2021

Annex

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

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 [F1a 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.
(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).

s41 Housing and Planning Act 2016

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.

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)….
(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.