FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2021/0042**
HMCTS code		**V: CVPREMOTE**
Property	**:**	**3rd Floor, 35-37 William Road, London NW1 3ER**
Applicant	**:**	**Carlos Reguero Jimenez (1)** **Ruben Fernandez Sanchez (2)** **Alejandro Ventura Morales (3)**
Representative	**:**	**-**
Respondent	**:**	**Global 100 Ltd**
Representative	**:**	**Mr Anthony Owen** **Kelly Owen Ltd**
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** **Ms R Kershaw MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR** **By remote video hearing**
Date of hearing	**:**	**21st June 2021**
Date of decision	**:**	**6th July 2021**

DECISION

Decision of the tribunal

(1) The Respondent shall pay to the Applicants a Rent Repayment Order in the total sum of £6,251.85. The

details of the amount to be paid to each applicant is set out in Appendix 1.

(2) The Respondents are 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 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 Global Guardians had failed to obtain an HMO licence for 35-37 William Road, London NW1 3ER ("The Building"). The Applicants occupy a flat on the 3rd floor of the building ("the flat") which has two bedrooms, a living room/kitchen and bathroom/WC facilities located in the communal area outside of the flat on the 3rd floor. Any of the occupiers of the building can use that bathroom/WC as it has no lock. The charge for occupation of the flat was £1500 pcm.

3. At a telephone directions case management hearing on 9th March 2021, it was argued that "*Global Guardians*" was not a legal entity and Global 100 Ltd was substituted as the Respondent and directions were issued.

4. The history is briefly as follows: Euston One Limited is the registered owner of 35-37 William Road, London NW1 3ER ("The Building") which was the former Addison Lee Building [150].

5. By an agreement dated 20th November 2019 between Global Guardians, signed by Global Guardians Management Ltd ("GGM") and Euston One Ltd [148], possession of the building was handed over to GGM so as to install property guardians in the building. The agreement allows for £3700 to be paid to Euston One for an unspecified term. The building is managed by Global 100 Limited ("G100") on behalf of GGM. The agreement allows a licence to be granted to G100.

6. The Respondent granted licence agreements to the Applicants as follows:

7. On 5th June 2020 Carlos Reguero Jimenez ("the 1st Applicant") was granted a licence by G100 for the 3rd floor flat [90]. On 4th June 2020 Ruben Fernandez Sanchez ("the 2nd Applicant") was granted a licence by G100 for the 3rd floor flat. [108].

8. Sometime in August 2020 Alejandro Ventura Morales ("the 3rd Applicant") moved into the flat with the consent of G100 who granted him a licence on 3rd September 2020 [72].

9. Each of the licence agreements have the logo and name "*Global Guardians*" at the top of each page of their agreements. This mirrors the logo and name that appears at the top of each page of the management agreement between GGM and Euston One Ltd [148]

10. The flat was let unfurnished to the Applicants and they installed a washing machine, cooker, living room furniture as well as mattresses. At the time they moved in the lift was not working and they had to carry the furniture up 3 flights of stairs. The lift remained out of commission for around 3 months.

11. At the time the 1st and 2nd Applicants moved in, there was a lot of IT equipment installed in the property, such that one of the bedrooms was not habitable. One of the Applicants occupied a bedroom, and the other occupied the living area. When the 3rd Application joined them, he shared the living room with the 1st Applicant. The respondent promised at the outset of the licence that they would remove the IT equipment from the flat. When this was not done, the Applicants emailed the Respondent on numerous occasions about this. When that failed they asked that the rent be reduced. When this too was refused, the Applicants went to the Camden Council ("the Council") to ask for assistance.

12. The Council visited the building on 26th November 2020 when they found between 10-12 "*tenants living in the property*" and confirmed that the property was being occupied as an HMO [20].

13. Following the Council's intervention, The Respondent reduced the Applicants' monthly charge to £1100 from November 2020. The flat was vacated by 28th December 2020.

14. The periods for which they seek rent repayment orders is as follows:

    - Applicant 1: 09.06/2020-28.12/2020
    - Applicant 2: 09/06/2020-28/12/2020
    - Applicant 3: 16/08/2020-28/12/2020

15. On 9th March 2021 the Tribunal issued directions [12-18].

The Hearing

16. 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.

17. 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 Applicants submitted various documents which the Respondent has included in their Bundle consisting of 171 pages. On the morning of the hearing the Tribunal received additional documents from the Respondent in the form of a letter from the Council to Euston One Ltd dated 6/05/2021 enclosing their Notice of intent to impose a financial penalty in relation to the building, an email dated 12th February 2021 as well as two cases.

18. All three Applicants joined the hearing remotely by video connection. Also present remotely was Mr Herminio Jose Pineiro Ronquete, an interpreter fluent in Spanish, to assist the Tribunal.

19. The Respondent was represented by Mr Anthony Owen a solicitor from Kelly Owen Ltd, who joined remotely by video. No one from the Respondent company accompanied him.

20. In oral evidence the Applicants explained the basis of their claim, as set out in the background above, the amount of rent paid by them each, and the amount of Universal Credit Housing Component received. Mr Owen confirmed that there are no rent arrears. Payments were made on occasions to GGM, and also to the Respondent.

21. Payments received from the Department for Work and Pensions ("DWP") are as follows:

    (i) A total amount for housing costs of £640.01 was paid by the DWP to the 1st Applicant for the month of September 2020
    (ii) A total amount for housing costs of £2,250.55 was paid by the DWP to the 2nd Applicant for the months of July, August, September and October 2020.
    (iii) £0 was awarded by the DWP to the 3rd Applicant.

22. The DWP documentation was considered in detail. The 1st Applicant did not dispute the payment received. The 2nd Applicant said that although the UC statements provided by the DWP did provide amounts as set out in Appendix 1, he denied receipt of such large sums. The difficulty with his argument is that the Tribunal had only page one of three of the UC statement of award. It was agreed by the 2nd Applicant that he had been awarded an advance of £800 at the beginning of his claim which was being recouped on a monthly basis. It may well be that this is the reason why the total amount said to have been paid to him in his statements of award were always less that the amount that the DWP assessed him to have been entitled to for housing costs. In any event, there is no evidence before the Tribunal that the award has been appealed.

23. It was agreed by the parties that there were no rent arrears owed.

24. The Applicants referred the Tribunal to photographs in the bundle showing the shared communal area separated into sleeping areas at each end of the room to accommodate the 1st and 3rd Applicants, as well as communal seating area in the middle of the room. [126-135]

25. They expressed frustration at not being able to use the bedroom containing the IT equipment and at the lack of assistance provided by the Respondent. They told the Tribunal that the only items that were removed were ventilators, sometime late in the tenancy, which made no difference, as the 2nd bedroom remained unusable. The Tribunal noted the various emails from the Respondent on various dates from July 2020 to 21st October 2020 with excuses for their inaction.

26. The email dated 19th October 2020 [33] from Ralph Weatherley "*Client Liaison*" sent to all the guardians in the building informing them that a visit will take place by the "*owners*" the next day at 15:00 [33]

27. No one from the Respondent was available to clarify these issues at the hearing, although when asked Mr Owen said he was present from the Company, as he was their inhouse solicitor, but when asked how he could give evidence about the day to day running of the building, his response was that he was there to provide a legal submission.

28. It was not until the Applicants contacted the Council, and the building was found to be in breach of HMO licencing requirements, that the Respondent agreed to reduce the monthly charge to £1100 in November 2020

29. Further to the Council's visit on 26th November 2020, their letter dated 4th December 2020 "*it was confirmed that it was being occupied as an HMO. There were between 10-12 tenants living in the property who had access to shared bathroom amenities and paid rent to Global Guardians. The tenants confirmed that the property was their only or main residence. No HMO licence application has been received for the property and an offence has therefore been committed under section 72(1) of the housing Act 2004. Breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 were also noted during the inspection. Investigations are ongoing …*" [20].

30. The Applicants told the Tribunal that on 10th December 2020 the fire brigade and the Council visited the building together. There is no report from them, but the Applicants assert that they were told that the building was a fire hazard.

31. The Applicants seek to recover by way of a RRO under s.44 of the Housing and Planning Act 2016 ("The 2016 Act") the rent for the period from 9th June 2020 to 28th December 2020. The sum claimed is £9142.41.

32. In oral evidence, the Applicants confirmed that they had not been monitored in any way in their coming and going from the building. Although a receptionist/doorman was sometimes based at the main entrance to the building. That person did not take note of when they went and returned and, they say, was often absent from the desk at the front door. They told the Tribunal that the doorman was there to answer the door and take in post because there was no door bell. On one occasion, the doorman had delivered a package to the Applicants' flat, but they could not remember exactly who it was for and whether he had let himself into the flat.

33. In relation to inspections of the flat, the Applicants confirmed that they were given 24 hours' notice of any visits by the Respondent, as evidenced by emails, and that at no time had anyone let themselves into their flat. Having been given 24 hours' notice, the person visiting the property would knock on the door and be let in by the Applicants.

34. On the morning of the hearing, Mr Owen provided the Tribunal with a copy of a Notice of Intent to Impose a Financial Penalty in relation to the building addressed to Euston One Limited. The covering letter states that "*an offence has been committed under section 72(1) of the Housing Act 2004 for failing to license the property*". Within the Notice of intent it confirms that "*An agreement was signed on 20th of November 2019 between the owners of the property Euston One Limited and Global Guardians Management Limited (GGM) granting possession of the property to GGM. The agreement allows that £3700 will be paid to Euston One (it is not clear whether this is paid monthly or annually). The property is managed by Global 200 Limited (G100) and the agreement between GGM and Euston One Limited allows a licence to be granted to G100. G100 has tenancy agreements with the occupiers. Witness statements from the occupiers show that the property has been occupied since the 4th of March 2020*".

<u>Who managed the Building?</u>

35. G100 were managing the building as evidenced by the licence agreements to which they are a party, as well as their collection of the rent from the Applicants, as evidenced by bank statements and agreed by Mr Owen.

36. Although the Council have issued a notice of intent to impose a financial penalty against the freehold owner of the property in their letter dated 6.5.2021, they acknowledge in their email dated 12th February 2021 that "*we are happy for Global to be the licence holders*". They don't specify whether they would be happy for GGM or G100 to be the licence holders. That is somewhat indicative of the fluidity of these two company's responsibilities around the letting of the building, the accepting of licence fees and email correspondence.

37. The contract between the Euston One and GGM, makes frequent mention of G100 alongside that of GGM, and the rights and responsibilities are difficult to distinguish between them. For example:-

38. Under "*GGM's Obligation" "…Ensure that G100 and GGM both use reasonable care to ensure that no damage is caused to the Property. Ensure that G100 enforces the obligations on the part of the guardian contained in the Licences. Ensure that there is in place insurance at all times in a suitable amount covering G100 and GGM against liability for injury or loss to third parties*" [167]

39. Under "Vacating the Property after Termination" it states "*….will ensure that all goods in the Property belonging to G100 and GGM are removed and all keys are returned to the owner. …If at Termination, any Guardian is still in occupation of the Property then GGM will co-operate with the Owner in securing the removal of any; remaining Guardians from the Property and will ensure that G100 also provides such co-operation.* " [167]…… In so seeking to recover possession, G100 or where appropriate, GGM, will be responsible for legal costs involved in removing a Guardian from the Property. The sums payable by G100 or as the case may be, GGM, shall be limited in total to the maximum figure of £100,000.00 in relation to all or any losses damages, liabilities, costs or any other sums of any description"

40. In relation to the licence agreements, although the agreement is said to be between G100 and the Applicants, the logo and name of "Global Guardians" appears on each page of those contracts.

41. The Council in their correspondence appears to have difficulty differentiating between these two, preferring to refer to "Global". Which would suggest that the occupiers of the building, and in particular the Applicants, for whom English is not their first language, may have similar difficulties.

42. Not only is there confusion about Global and in what form it manages which tasks, but there is confusion about who the owner of the building is. Even Global's Client Liaison officer in his email of 19.10.2020 confuses issues by referring to the property owners as MBU Capital [33]. Ownership was an issue raised by the Council in their email of 12.02.2020 having checked the land registry and found Euston One Ltd to be the registered owner. For the purposes of this Application it doesn't matter, but it is an indication of the confusing way identities of companies are bandied around and the confusion this causes.

<u>Respondent's Legal submissions</u>

43. The bases of the legal submissions made by Mr Owen on behalf of the Respondent are set out within the grounds of resistance [136-140]. His written and oral submission can be summarised as:

a. The property was not an HMO and therefore did not need a licence

b. The Applicants did not pay rent but rather a licence fee and such payments do not come into section 40 of the 2016 Act

c. The Respondent was not liable as it did not come within section 263 of the 2004 Act as it did not receive a rack rent and was not an owner or lessee.

d. The First-tier Tribunal case of 49 Russell Hill Road, Croydon, CR8 2XB (LON/00AH/HMK/2020/0021)

HMO or not

44. The reason it is submitted that this was not a HMO was because it did not meet the 'standard test' under section 254(1)(a) Housing Act 2004. In particular, it is argued that section 254(2)(d) is not satisfied in this case:

> *(d) their occupation of the living accommodation constitutes the only use of that accommodation*

45. It is submitted that the Applicants were property guardians and their occupation was not to provide accommodation but rather to protect the property. The Tribunal rejects this contention as wrong. The Applicants were not service occupiers or otherwise employed to protect the building. A side effect of their presence may be to dissuade trespass or damage, but they were there in order to have a roof over their heads and only that.

46. The Tribunal finds beyond a reasonable doubt that the building required an HMO licence and the Respondent did not have one or apply for one in the relevant period.

Rent or licence fee

47. It is submitted that there is no tenancy and reference is made to *Camelot Guardian Management Limited* v *Khoo* [2018] EWHC 2296 (Ch). It is not necessary for the Tribunal to rehearse the factors that lead to a distinction between a tenancy and a licence as the Tribunal is proceeding on the basis that the Applicants had been granted licence agreements and it was not suggested by the Applicants that it was otherwise.

48. The difficulty the Respondent has is section 56 of the 2016 Act which defines a tenancy as including a licence. It was argued however that it is only 'tenancy' and 'letting' that is so defined in section 56 and not 'tenant' or 'rent' such that a RRO can only apply to rent payments by a tenant and not licensee payments.

49. The Tribunal is of the view that there is no ambiguity in the Act and it is clear that the definitions of tenancy and letting in section 56 are enlarging ones and the terms rent and tenant are also adapted accordingly. The definitions in section 262 of the 2004 Act and section 56 of the 2016 Act are so wide that it is clearly intended to cover situations where there are multiple parties and arrangements.

50. Excluding licensees from the Act would negate the purpose and reach of rent repayment orders and it cannot have been intended to exclude them from the protection of the Act.

51. The Tribunal finds that licences, licensors and licensees come within Part 2 of the HPA 2016

52. It was accepted by the Respondent that it received licence fees from the applicants.

Section 263

53. It is argued that the Respondent does not receive a rack rent because they do not receive rent but a licence fee and are not therefore caught by section 263(1) HA 2004. They further say they are not managing the building as they are not the owner or lessee but rather a sub-licensee and are not caught by section 263(3) HA 2004.

54. The meaning of 'lessee' in section 262 HA 2004 includes sub-leases or sub-tenancies. The Tribunal concludes that this definition is wide enough to encompass the relationship between the Respondent and the Applicants. Once it is found that licence fees are not excluded from a RRO, the issue over G100 not managing the Building falls away.

First-tier Tribunal case of 49 Russell Hill Road

55. Mr Owen also made reference to the First-tier Tribunal case of 49 Russell Hill Road, Croydon, CR8 2XB (LON/00AH/HMK/2020/0021). It is not clear what assistance that case gives to the Respondent as this is not a case where the Council had informed the Respondent that they did not need a licence such as to have a defence of reasonable excuse. That case did not find that no licence was needed. In fact the opposite is found and it also found that Camelot were both in control of and managing the property [66]. It also dealt with whether a Director could have a rent repayment order made against them. This is not relevant to the facts of this case. The findings in that case reinforce the Tribunal's findings in this case.

56. The Tribunal finds:

    a. There is no distinction in Part 2 of the 2016 Act between the payment of rent and the payment of a licence fee.

    b. The Respondent is a lessee for the purpose of section 263(3) of the 2004 Act.

    c. The Respondent received payments from the Applicants who were in occupation of parts of the Building.

    d. The Respondent was therefore a manager of the Building for the purposes of section 263(3) of the 2004 Act .

    e. The Tribunal also finds that had the Building been let at a rack rent the Respondent would have received that rent such as to be in control of the building under 263(1) the 2004 Act.

57. The tribunal were satisfied beyond reasonable doubt that there has been a breach of the requirement to licence the property.

58. Therefore the only further issue for determination by the Tribunal is the amount of the RRO.

59. The Tribunal established the amount of the Universal Credit housing element received by the Applicants. Any award must be net of that amount. The net sum of rent paid by them is £6,251.85 as set out in Appendix 1.

60. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

61. There is no evidence of poor conduct by the Applicants.

62. There are however issues surrounding the conduct of the Respondent. Firstly in relation to the lack of a lift for three months, and in particular at the start of the contractual arrangement when washing machine, cooker and all their furniture had to be carried up three flights of stairs. Secondly the IT equipment which resulted in a bedroom being completely uninhabitable. The frequent requests to remove this equipment being stalled or ignored, and requests that the rent be reduced accordingly, also being refused until the Council became involved and for the last month and a half the rent was reduced to £1100.

63. There was nothing before the Tribunal to determine the financial circumstances of the Respondent. Nor was there any evidence produced to reduce any award in relation to utilities.

64. There is no evidence that the Respondent has at any time been prosecuted for not licensing the property.

65. 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 Respondent in the sum of £6,251.85, which should be paid to the Applicants in the proportions set out in Appendix 1.

Name: Judge D Brandler **Date:** 6th July 2021

APPENDIX 1

Applicant	Month 2020	paid	UC received	Net paid	RRO awarded
Carlos Reguero Jimenez (1)	June July August September October November December	£750 £750 £500 £500 £500 £366.67 £180.80	0 0 0 £640.01 0 0 0	£2907.46	£2907.46
Ruben Fernandez Sanchez (2)	June July August September October November December	£750 £750 £500 £500 £500 £366.67 £180.80	0 £476 £674.85 £674.85 £424.85 0 0	£1296.92	£1296.92
Alejandro Ventura Morales (3)	August September October November December	£500 £500 £500 £366.67 £180.80	0	£2047.47	£2047.47
total					**£6,251.85**

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).

262 Meaning of "lease", "tenancy", "occupier" and "owner" etc.

(1)In this Act "lease" and "tenancy" have the same meaning.

(2)Both expressions include—

(a)a sub-lease or sub-tenancy; and

(b)an agreement for a lease or tenancy (or sub-lease or sub-tenancy).

And see sections 108 and 117 and paragraphs 3 and 11 of Schedule 7 (which also extend the meaning of references to leases).

(3)The expressions "lessor" and "lessee" and "landlord" and "tenant" and references to letting, to the grant of a lease or to covenants or terms, are to be construed accordingly.

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

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

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

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

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

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

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

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

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

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

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

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

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

Section 41 **Application for rent repayment order**

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

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

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

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

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

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

Section 43 **Making of rent repayment order**

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

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

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

(a) section 44 (where the application is made by a tenant);

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

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 **Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

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

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

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.