FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/HMF/2021/0168**
HMCTS code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**20, The Vale, London. NW11 8SG**
Applicants	**:**	**(1) Mr. Luis Fernando Oliveira Neto** **(2) Mr. Alexander John Rabone** **(3) Ms. Samantha Ellen Daly** **(4) Mr. Arran Liam Cooper-Moxam** **(5) Mr. Andreas Nowottny**
Representative	**:**	**Ms. S. Alvarez of Represent Law Ltd.**
Respondents	**:**	**(1) Mill Cross Ltd.** **(2) Mr. Alex Rizavi**
Representative	**:**	**Not represented**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Tribunal Judge S.J. Walker** **Tribunal Member Mr. A. Lewicki FRICS.**
Date and Venue of Hearing	**:**	**20 January 2022 – video hearing**
Date of Decision	**:**	**1 March 2022**

DECISION

---

(1) The Tribunal refuses the applications for Rent Repayment Orders under section 43 of the Housing and Planning Act 2016.

© CROWN COPYRIGHT 2022

(2) The Tribunal makes no order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement of fees.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. 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 that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

The Application

1. The Applicants seek rent repayment orders pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act").

The Law

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

3. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. This list includes offences contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act"). An offence is committed under this section if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

4. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description. Those prescribed descriptions are to be found in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018 ("the Order"). Under the Order an HMO falls within the prescribed description if it is occupied by five or more people, and is occupied by people living in two or more single households, and, among other things, it meets the standard test under section 254(2) of the 2004 Act.

5. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed. This is the criminal standard of proof and is a high hurdle to overcome, though it does not require proof beyond any doubt at all.

6. The Act makes provision about when applications may be made and in respect of what periods orders may be made. Those provisions are important in this case.

7. Section 44(2) of the Act provides that for offences of the kind alleged in this case an order may be made in respect of a period not exceeding 12 months during which the landlord was committing the offence.

8. Section 41(2) of the Act states as follows;

   "*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.

9. Although an offence may be committed under section 72(1) of the 2004 Act by a number of people involved in the management and control of an HMO, a rent repayment order may only be made against the immediate landlord of a tenant to whom the housing was let at the time the offence was committed. This is made clear by the Court of Appeal's decision in the case of Rakusen -v- Jepsen and others [2021] EWCA 1150.

Procedural Background

10. The application was dated 9 July 2021 and received by the Tribunal on 16 July 2021 as evidenced by a letter sent by the Tribunal to the Applicants' representatives on 12 August 2021.

11. Directions were issued by the Tribunal on 11 October 2021 – they appear at pages 123 to 127. Among other things, they required the parties to prepare bundles of documents on which they rely for use at the hearing.

12. The Tribunal received a bundle comprising 136 pages on behalf of the Applicants, but no documents were received from either Respondent. Page references throughout this decision are to this bundle unless otherwise stated. It also had some additional documents from the Applicants which comprised current evidence of ownership of the property and evidence about the status of Mill Cross Ltd. as a company registered in the Bahamas.

The Hearing

13. Mr. Neto, Mr. Rabone and Mr. Cooper-Moxam attended the hearing. The other Applicants did not. However, they were all represented by Ms. Alvarez from Represent Law Ltd. Neither Respondent attended and they were not represented.

Absence of the Respondents

14. The Tribunal first considered whether it should hear the application in the absence of the Respondents. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") allows the Tribunal to proceed in the absence of a party if it is satisfied that that party has been notified of the hearing or that reasonable steps

have been taken to do so, and that it is in the interests of justice to do so.

15. The First Respondent, Mill Cross Ltd., is a company registered in the Bahamas, as shown by the land registry entry in respect of the property (page 30). The address given for the company in this entry is flat 1, 6, Park Avenue, London NW2 5AP. It is not clear precisely what connection the Second Respondent, Mr. Rizavi, has with the First Respondent, though in the course of the hearing Mr. Neto said that he had seen documents which showed that Mr. Rizavi was a director of the First Respondent. However, the tenancy agreements relied on by the Applicants either give the address of the First Respondent as care of the Second Respondent at the address of the property (see pages 42, 58, 68, and 73) or refer to him as the landlord (page 50). The Applicants' witness statements all suggest that Mr. Rizavi was acting on behalf of the First Respondent in some role or other. In each case the tenancy agreements relied on state that the landlord's address for service (including notices of proceedings) is the address given at the start of the agreement, which in each case is the address of the property occupied by the Applicants.

16. The Tribunal records show that notice of the application and of the hearing was sent to both Respondents at the addresses provided, yet no response had been received.

17. The Tribunal was satisfied that reasonable steps had been taken to notify the Respondents of the hearing and, having considered the overriding objective in rule 3 of the Rules, that it was in the interests of justice to proceed in their absence.

Case Against the Second Respondent

18. As explained above, the freehold title to the property is owned by the First Respondent (page 30). There was no evidence before the Tribunal to show that the Second Respondent had any legal or equitable interest in that property. The Tribunal invited Ms. Alvarez to explain on what basis, in the light of the Court of Appeal's decision in the case of Rakusen referred to above, the Tribunal could make any order against the Second Respondent. Both she and Mr. Neto stressed the fact that in the tenancy agreements relied on the Second Respondent was, on one occasion, described as the landlord (page 50), and in the other cases the landlord's address was care of him. Also, the bank statements showed that some rent payments were made to Mr. Rizavi. Reliance was also placed on the Applicants' witness statements in which it was made clear that when dealing with matters relating to their tenancies the Applicants dealt with Mr. Rizavi.

19. In the course of her submissions Ms. Alvarez accepted that there was nothing to show that the Second Respondent had any interest in the property itself and there was nothing to show that he was anything other than an agent for the freeholder, who was also the landlord.

20. At this point she made an application for an adjournment in order to seek further evidence in relation to the Second Respondent's role. The Tribunal refused this application. At least since the decision in Rakusen was handed down in July 2021, it should have been apparent to the Applicants and their representative that in order to succeed in their case against the Second Respondent they would need to show what interest he himself had in the property and that he was, in fact, a landlord. Despite that, they had produced no evidence of this at all and it was difficult to see, realistically, what evidence could be obtained, especially if the Respondents chose not to engage in the proceedings.

21. Having refused the application, the Tribunal was then informed by Ms. Alvarez that she accepted that, on the evidence before the Tribunal, the Applicants could not succeed against the Second Respondent.

22. The Tribunal agreed with this concession. The only documents which in any way suggested that Mr. Rizavi was the landlord of any of the Applicants was the tenancy agreement with Mr. Cooper-Moxam which, unlike the others, named him as the landlord and did not name the company (page 50), and those bank statements which showed that the rent was paid to Mr. Rizavi rather than the company (see pages 83 to 87 and 95 to 111). However, merely being described as the landlord in only one of the five agreements is not sufficient to make him a landlord. Similarly, the evidence also showed rent payments being made to the First Respondent, even by those who had also paid the Second Respondent (see pages 81 to 83). In the view of the Tribunal the evidence showed no more than that the Second Respondent was acting as an agent for the company who was the true landlord. Even if it could have been shown that he was a director of the First Respondent this would not make him, rather than the company, the landlord in this case.

23. Had all the tenancy agreements clearly stated that it was Mr. Rizavi, and not the company, that was the landlord it may have been possible to infer a leasehold agreement between the two Respondents such that the Second Respondent would become the landlord – thereby, of course, removing liability from the First Respondent. However, that was certainly not the case here. On the balance of probabilities, the Tribunal concluded that the Second Respondent was either an officer of the First Respondent company and acting on its behalf, or that he was more distantly connected, for instance, simply a managing agent with no executive relationship with the company at all. In either case, the Tribunal was not satisfied that there was sufficient evidence to show that the Second Respondent was a landlord of the Applicants and so it concluded that no orders could be made against him.

Were the Applications in Time?

24. The Tribunal then considered the requirements of section 41(2)(b) of the Act and whether or not, in the case of each Applicant, their application had been made within 12 months after any offence was being committed whilst they were tenants. The starting point for this

consideration was the date the application was made. This is the date on which it was received by the Tribunal, which was 16 July 2021. It followed, therefore, that in order to be successful each Applicant would need to show that they were still tenants of the property on 16 July 2020, otherwise their application would be out of time.

25. The claims made by the Applicants in their witness statements were as follows.

    (i) Mr. Neto, sought an order for 12 months' rent and his witness statement says that he moved in on 14 June 2019 and left on 24 January 2021 (pages 33 to 39). On the face of it this claim was in time.

    (ii) There was no witness statement from Mr. Rabone. The tenancy agreement relied on was for a period from 9 June 2019 to 8 June 2020 (page 73). In the Applicants' statement of case an order for 12 months' rent was sought.

    (iii) Ms. Daly, sought an order for 10 months' rent. In her witness statement she stated that her tenancy began on 14 September 2019, which was when she moved in, and was for a period of 1 year. However, she gave notice that she was terminating the tenancy early on 21 June 2020 and she agreed to leave in July 2020 (pages 63 to 65).

    (iv) Mr. Cooper-Moxam, sought an order for 12 months' rent. In his witness statement he said that he moved in on 22 June 2019 (page 48). In his oral evidence he said that he moved out on 26 September 2020. On the face of it his claim was in time.

    (v) Mr. Nowottny, sought an order for 12 months' rent. In his statement he said that he moved into the property on 15 December 2019 (page 55). His statement says that he had an assured shorthold tenancy which expired on 14 December 2020. Although he does not say expressly when he left the property, he states that there were no rent arrears when he left, and the evidence shows that he made a rent payment in August 2020 (page 113). On the face of it his claim was in time also.

26. In the light of what is set out above the Tribunal considered the cases of Mr. Rabone and Ms. Daly in more detail. In the case of Mr. Rabone his monthly tenancy ran from the 9th of one month to the 8th of the next month (see page 73). His own evidence to the Tribunal was that his tenancy ended on 8 June 2020, as stated in his agreement. Initially he said that he agreed to extend his agreement by two months. However, after checking his tenancy agreement for the property he moved into after leaving this property, he revised his evidence and stated that his new tenancy started on 5 July 2020. He had in fact only agreed to extend his tenancy by one month, which meant that his tenancy ended on 8 July 2020, when he moved out. He also frankly accepted that he was no longer living in the property on 16 July 2020.

27. It follows from this that in the case of Mr. Rabone the requirements of section 42(2) of the Act were not met and so the Tribunal had no jurisdiction to make an order in his favour. On his own admission his tenancy ended on 8 July 2020. The property was not being let to him within the period of 12 months ending on the date his application was made. Ms. Alvarez accepted that the Tribunal could not make an order in his case.

28. In the case of Ms. Daly, she was only seeking an order for a period of 10 months (see page 17). Her tenancy ran from 14 September 2019 and this was when she moved in (pages 68 and 64). It follows that she was only claiming for the period ending on 14 July 2020. Her evidence was that she agreed to move out early and that a date in July 2020 was agreed, which is consistent with her tenancy coming to an end on 14 July 2020. This is also consistent with the evidence of rent repayments relied on by her (pages 89 to 94) which show that the last payment was made in the period between 3 June and 2 July 2020.

29. The Tribunal suggested to Ms. Alvarez that the evidence showed that the most likely conclusion to be drawn was that Ms. Daly's tenancy came to an end on 14 July 2020, and she agreed with that. So, it followed that in her case, too, the requirements of section 42(2) of the Act had not been met and no order could be made in her favour either.

The Cases of the First, Fourth and Fifth Applicants

30. Whilst the Tribunal was satisfied that the applications of the remaining Applicants were, on the face of it, in time, the question still remained as to whether or not an offence had been committed during the relevant period. If no offence had been committed after 16 July 2020 there would be no basis for making an order in their favour either.

31. The Applicants' statement of case (pages 15 to 17) states that the basis of their claim is that the Respondents had management or control of an unlicensed HMO which was required to be licensed under the mandatory requirements. This is the only ground referred to there. There is some mention of poor behaviour by the landlord in the witness statement of Mr. Neto – see pages 35 to 38. As a result of this the Tribunal clarified with Ms. Alvarez what the bases of the applications were. She confirmed that the Applicants were only pursuing the allegation that the Respondents were in control of an unlicensed HMO and nothing else.

32. That being the case, in order for the remaining Applicants to succeed they would need to show to the criminal standard that there were 5 or more people living in the property at some point after 16 July 2020. If not, they would not be able to show that an offence had been committed in the relevant period and no order could be made.

33. The Tribunal was not satisfied that the Applicants had provided sufficient evidence to show that there were at least 5 people living in the

property at any time after 8 July 2020 when Mr. Rabone's tenancy came to an end. It reached that conclusion for the following reasons.

34. The Tribunal bore in mind the assertion made at paragraph 4 of the Applicants' statement of case that at all material times there were 5 or more people living in the property. However, that statement appears to have been made on the basis that those 5 people were the five Applicants.

35. Given the findings set out above that the tenancies of Mr. Rabone and Ms. Daly had come to an end before 16 July 2020 and, importantly, that Mr. Rabone was no longer living at the property on 16 July 2020, it became necessary for the remaining Applicants to show that some other people were living at the property apart from themselves after that date. They have provided insufficient evidence to do so.

36. Nowhere in the statement of case is there a mention of any other occupiers. The witness statements that have been provided are surprisingly lacking in detail as to who was living at the property when. With three exceptions which are referred to below, none of the statements refer even to the occupation of the property by the other Applicants, let alone by other people. There is no schedule which sets out who was in the property when. None of the Applicants who attended the hearing gave evidence of any other people being in occupation.

37. There are also some surprising inconsistencies in the Applicants' case. A letter from the Applicants' representatives to the local housing authority describes the property as having 6 bedrooms (see page 26), and it is described as such in the witness statements of Ms. Daly and Mr. Nowottny (see para 5 at page 64 and para 5 at page 55). However, in his witness statement Mr. Neto states that it has 7 bedrooms (para 8 at page 35), as does Mr. Cooper-Moxam (para 5 at page 47).

38. The only evidence to show that any other person was living at the property at any time is as follows. Firstly, both Ms. Daly and Mr. Cooper-Moxam refer to the Second Respondent being in occupation for a short period. However, they both say that this was in 2019 so this is of no assistance to the Applicants' case (see para 4 at page 63 and para 14 at page 48).

39. Secondly, Mr. Neto states that the landlord's agent Jerry and his wife moved into the property on 17 January 2021 (see para 7(vii) at page 34). However, the evidence suggests that by then not only had Mr. Rabone and Ms. Daly left the property but so too had Mr. Cooper-Moxam – who confirmed in his oral evidence that he moved out on 26 September 2020 – and Mr. Nowottny – who stated in his witness statement that his rent deposit was returned to him on 3 October 2020 (see para 8 at page 55). Whilst, therefore, there were two new people in the property from 17 January 2021 onwards, there was insufficient

evidence to show that anyone other than them and Mr. Neto was living there at that time.

40. Finally, Mr. Neto also refers to his girlfriend being at the property on various occasions. However, his witness statement makes it clear that she had not moved in and was renting another flat (see para 11(18) at page 37).

41. In summary, therefore, there was insufficient evidence for the Tribunal to be satisfied to the criminal standard that there were 5 or more people in occupation of the property at any point after 16 July 2020. It follows that the Tribunal was not satisfied that any offence contrary to section 72 of the 2004 Act was being committed within a period of 12 months before the application was made.

Conclusions

42. It follows from what is set out above that the Tribunal was satisfied that no rent repayment orders should be made. It was satisfied that even if the Respondent had committed an offence under section 72 of the 2004 Act at some time prior to 16 July 2020, that offence came to an end when the number of occupants of the property fell below 5. There was insufficient evidence to show a continuation of such an offence at any time after 16 July 2020. This application was made more than 12 months after any section 72 offence came to an end, so the Tribunal has no jurisdiction to make an order.

43. There was no application by the Applicants under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, in any event, given its decision, it was not just and equitable to make such an order.

Name:	Tribunal Judge S.J. Walker	**Date:**	1 March 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

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

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(1) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(2) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

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

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.

<u>Section 52</u> Interpretation of Chapter

(1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.