



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

Case reference : LON/00AL/HMF/2022/0147

HMCTS code : Face to face

Property : 9 Charlton Road, London SE3 7EU

Applicant : Victoria Alcock Rodriquez (A1)
Owen Shann (A2)

Representative : -

Respondent : Lee-Lee Oh

Representative : Winston Brown
Brown & Co solicitors

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 Fiona Macleod MCIEH

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 15th February 2023

Date of decision : 24th February 2023

DECISION

Decision of the tribunal

(1)The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £2,915.50. This sum to be

paid within 28 days of this order in the following proportions to the Applicants:

(a) To Victoria Alcock Rodriguez (A1) the sum of £1,457.75

(b) To Owen Shann (A2) the sum of £1,457.75

(2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.

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

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 10/07/2022 seeking a Rent Repayment Order ("RRO") under section 41 of the Housing and Planning Act 2016.

2. Directions were issued on 8th August 2022

3. The application alleged that Lee-Lee Oh, "the respondent" landlord, failed to obtain an HMO licence for 9 Charlton Road, London SE3 7EU ("the property"), in breach of the mandatory HMO licensing requirements operated by The Royal Borough of Greenwich ("the Council").

4. The property is a converted house containing 2 studio flats, 2 kitchens, 8 rooms with ensuite shower/wc rooms and 1 room with a shower/ensuite room on the floor below the room.

5. Victoria Alcock Rodriguez ("A1") and Owen Shann ("A2"), ("the applicants") are a co-habiting couple who occupied room 6 in the property which contained a bed, a wardrobe, a large tv on the wall and an ensuite shower-room/wc.

6. The history of the occupancy is as follows.

7. The applicants were granted an assured shorthold tenancy of Room 6 in the property by an agreement dated 16/09/2021 and they moved in on 20/09/2021. The monthly rent was £950 pcm which included all utilities. They moved out on 19/02/2022 [A/7,22]

8. When they moved into the property, there was already a tenant in occupation of room 1. That was Aristotelis Pahatouridis ("Aris"). He was still occupying that room when the applicants moved out of the property. Aris was granted a tenancy agreement from 10/09/2021 for a period of 6 months for a monthly rent of £800 [A3].

9. On 03/10/2021 Anton Angelov and Peter Brsel (“Anton” and “Peter”) moved into room 2A as a couple. They were granted an AST for 6 months [A/9]. They moved out on 2/12/2021

10. After moving out of the property the applicants contacted the Council about the property asking for information about licensing of the property. The council responded on 10/03/2022 stating “*As you have been living in an unlicensed HMO you are entitled to apply for a Rent Repayment Order...*” [A/42].

11. The period for which the Applicants seek a rent repayment order is from 20/09/2021 until 19/02/2022 in the sum £4,750.

PRELIMINARY ISSUES

12. On 07/02/2023 the respondent’s solicitor sent a submission and a large bundle of further evidence to the applicants. The Tribunal received only the submission by email. The large bundle of further evidence was said to have been sent to the Tribunal by registered post on 08/02/2023 but could not be located on the morning of the hearing. The applicants in any event objected to the late evidence which is in breach of the directions which required the respondent to provide all evidence upon which she seeks to rely to be submitted by 03/10/2022.

13. In an oral application by the applicants, they object to both the submissions from the respondent as well as the further evidence. When asked to clarify exactly which paragraphs in the written submission they object to, they confirmed objection only to paragraphs 9 and 12 which referred to the respondent’s position in relation to Aris’ occupation.

14. In oral submissions from Mr Brown, he states that the information provided in the submission will be required during the course of the hearing to establish whether or not there has been an offence. On this point the Tribunal agreed, and the submission is allowed.

15. Having handed up a large paper bundle of the additional evidence which included a mortgage bank statement, two other bank account statements, business accounts from April 2022, photographs of the house, a gas safety certificate, an EIHC, and water rates bills. The applicants argue because of the very late submission of this evidence, they have not had time to consider the evidence fully and it is unjust to allow it. Mr Brown for the respondent argues that the documentation contains relevant information that would assist the Tribunal to determine the respondent’s financial circumstances if a RRO were to be made. The utility bills provide the Tribunal with information in relation to any deductions that would need to be considered, and the photographs are there to provide the Tribunal with more detail about the good condition of the property. Mr Brown had only been instructed this year and did not know why there had been a delay in providing this evidence. The respondent told the Tribunal that her excuses for the late submission were that: She was busy with

accounts, she is alone looking after the house, she suffers from dizziness, she travelled to Malaysia from 01/09/2022 until 20/09/2022, and finally she says the directions permitted her to submit further evidence in the week prior to the hearing.

16. By Rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 the Tribunal may “*extend or shorten the time for complying with any rule, practice direction or direction, even if the application for an extension is not made until after the time limited has expired*”, and considered that it would be disproportionate to exclude all of the additional evidence and contrary to the overriding objective to deal with cases fairly and justly.

17. The respondent’s additional late evidence which is permitted is as follows: the photographs, the gas and EIHC certificates and the utility bills only. Permission for the bank statements and accounts was refused because having considered those documents it is clear that is not a full picture of the respondent’s financial circumstances and it is unjust in the circumstances to allow late partial financial evidence to be admitted when the applicants have had insufficient time to deal with this. The directions clearly do not provide such permission as suggested by the respondent.

18. However, that was not the end of the late submission of evidence. Having ruled on the late evidence from the respondent, the applicants sought to hand up their additional bundle of evidence, not previously mentioned, because they say they should be allowed to respond to the respondent’s late evidence. Clearly that had been prepared in advance of the hearing and they had not provided a copy to the respondent or Mr Brown.

19. The respondent and her representative were given an opportunity to consider this evidence and their position. The applicants’ additional bundle of documents includes a few photographs, A1’s bank statements, evidence of journey’s to demonstrate that A1 and A2 did live at the property, evidence of their educational course as students. Having had the opportunity during a short adjournment to consider the late documents, the respondent did not object to the admission of this evidence and permission was granted for the applicants in this regard.

THE HEARING

20. 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.

21. This was a face to face hearing at which the applicants both attended in person and were accompanied by Anton Angelov (“Anton”), the previous tenant of room 2A, and Christopher Alcock, A1’s father. The respondent attended and was represented by her solicitor Mr Brown. The Applicants’ first bundle provided in accordance with the directions is comprised of

[63] pages of documents and will be referred to as [A/page number] during the course of this decision. The additional late bundle of evidence comprises a further [63] pages of documents and will be referred to as [AA/page number]. The respondent did not provide a bundle of documents contrary to directions, but had provided 15 separate documents. Any reference to the respondent's documents will name the specific document. Her further late evidence is not paginated and any reference to those documents will describe the document.

Occupation and rent paid

22. The Tribunal first heard from A2 who confirmed that he had lived at the property with A1 from 20/09/2021 until 19/02/2022 as their only home. They occupied Room 6 in the property which was on the top floor. Their room had an ensuite shower/wc room. He told the Tribunal that when they viewed the property, they had been shown two kitchens which they were told they could use. One larger, one small. However, when they moved in, they had the use of the larger kitchen only for a few days before the respondent told them they could no longer use it, as it was her private kitchen. Instead, they had the use only of the small kitchen which was not HMO compliant in dimensions. Photographs were provided demonstrating the layout and small dimensions of the kitchen [AA/57]. They also complain of cockroaches and loose wires in the kitchen and exhibited in photographs [AA/54-57].

23. In relation to other people occupying the property, he told the Tribunal that Aris worked in London and when he was not working, he would travel to visit family or friends but there was no evidence to suggest he lived elsewhere. He did not agree with the assertion in the respondent's submission that Aris had lived one week at the property and another week elsewhere. Aris was there when they moved in, and he was still living there when they moved out. Aris' tenancy agreement was for room 1 in the property for the period from 10/09/2021 until 10/03/2022 at a monthly rent of £800 [A/3]. He referred the Tribunal to some text messages between the respondent and Aris. These messages took place after the Council had started investigation of the property. In a text timed at 18:54 but not dated the respondent wrote

"Hi Ari. Did you have to register with Greenwich that you are living in a residential HMO house since you moved in?"

Did you also register that you can vote in Greenwich area?

The reasons I asked was because the Greenwich council came yesterday to spot check all my rooms claiming that someone report it that I have changed my house into residential HMO rather than a commercial guest house! Today Greenwich council called again and specially asked for tenants who has a contract and the commencement date etc!

They will come again next week after they report to the HMO department!

*Right now only Room 1 (your contract now expired) and rolling on month by month!
And room 1a which has a 6 months contract!*

All other guests have not got a 6 months contract and they can leave any time without notice as they are paying higher guest house daily rate!

Please let me know as I want to find out what information Greenwich council has received from any one in my house!" [A/43,44]

24. In what appears to be a message timed at 17:51, but not dated, the respondent writes:

*"She will return again I think after she reports to the HMO.
I would appreciate if can you get rid of things that will look like you are staying here permanently eg the Xmas or small lightings on the walls which I saw last time we checked the ceiling, and any other things that you fixed on wall which show that you will stay for longer term!"*

25. The Tribunal then heard from A1 who confirmed the information already provided by A2. She told the Tribunal that she had felt that the respondent had often accused them of being dirty and not cleaning up after themselves in the kitchen. This she said was not true, and that she made a considerable effort cleaning up after themselves. They had cut short their tenancy by a month because she said she could not live in that way, with the accusations and with cockroaches in the kitchen.

26. The Tribunal then heard from Anton who had been a tenant at the property with his partner Peter from 03/10/2021 until 02/12/2021. They had been granted an AST by the respondent at a monthly rent of £950 [A/9-10]. They occupied room 2A with an ensuite shower/wc room. He told the Tribunal that they usually got take away food because they found the kitchen so small with insufficient work surfaces. He also told the Tribunal about an incident when the respondent came to their room at 11.30 at night accusing them of smoking drugs when they were using only a dried form of tobacco called ICOS. They felt very aggrieved by the respondent's accusations. A voice recording of some 45 minutes of the interaction between him and the respondent had been included in the evidence. Some of that had been transcribed into what was referred to as Anton's witness statement [A/15,16]. Anton told the Tribunal that he and Peter had felt so uncomfortable in this environment that they had decided to leave after two months, choosing to pay a "re-letting" fee demanded by the respondent rather than stay for the duration of the tenancy agreement.

27. The Tribunal then heard evidence from the respondent. She does not dispute the applicants' period of occupation, the rent paid or that they

occupied as their only or principal home (although this had been raised in the papers this was not put to them in cross examination). She does however challenge the existence of cockroaches which she said she had never seen, and challenged the photographs provided because she said she did not recognise that as being her kitchen. Some time was spent during the hearing considering the close-up photographs of the cockroaches compared to the larger scale photos of the kitchen. She was silent on the issue of the wires. [AA/55,56].

28. The respondent's position is that Aris was only at the property for one week. Then would go elsewhere for a week. She states that the property was not therefore his only or principal home.

29. She told the Tribunal that she had run the property as guest house for some 17 years, and liked to keep the property clean, and comply with the Council's guesthouse rules. She told the Tribunal that she sometimes had long term guests that stayed for up to a year. In particular she told the Tribunal about a woman from Saudi Arabia who moved into Room 4 in November 2021; having initially booked the room for two weeks, she extended the agreement monthly while she was looking for a flat to move to, and paid the respondent £50 per night. No room cleaning was provided and no other service was provided. She had a microwave in the room and the respondent said that she ordered-in food daily. The respondent told the Tribunal that she had originally loaned the occupier linen, but only for a short period, then the woman had bought her own linen. She stayed in that room on a rolling monthly arrangement until August 2022 when she moved out to live with a woman friend she had met.

30. The respondent also told the Tribunal that in November 2021 she let room 5 to a man from Saudi Arabia at a £50 per night fee. He was a friend of the woman in room 4 from Saudi Arabia. He had stayed in that room for only one month because he said it was too expensive. He then moved into room 8 in the attic which did not have an ensuite, but had its own shower room/wc on the floor below. He paid £900 pcm. She provided no services or linen for him, although she said she helped him to make the bed because he didn't know how to do it. That man moved out in May 2022, when he moved to a shared house nearby in Rochester Way.

31. The respondent confirmed that prior to letting out the rooms on AST's she had installed 3 new kitchens in the house. One was her private kitchen, one was the shared kitchen for the rooms, and one was within the studio flat G on the ground floor. She also stated that she was in severe financial difficulty because of the lack of custom at the start of the Pandemic. When asked why, if she was in so much financial difficulty, had she decided to take on such expensive works as three kitchen installations. Her response was not entirely clear, but in essence she had taken a loan to do these works.

The respondent's grounds for opposing this application

32. The respondent raises the following reasons to establish a reasonable excuse:

- (a) *That A2 was not living at the property as his only or principal home;*
- (b) *In relation to the AST's, she asserts that she was badly advised by Right Move and that once she had paid the finder's fee to them, they started to ask for certification for the house asserting that it was an HMO. As a result, she terminated her agreement with Your Move, but as she had paid the finder's fee to them, did not want to terminate the potential income from the ASTs for Aris, A1/A2, Anton and Peter, and decided she would just take them for 6 months.*
- (c) *She found herself in the position of being in control of an HMO by accident caused partly because of the history of Covid and the period of lockdown when she was not able to let any rooms and in desperation, she decided to let the rooms without getting a licence.*

in the alternative:

- (d) *That the only period during which there were 5 people occupying the property as their only or principal home was from 03/10/2021-02/12/2021, that is A1, A2, Anton and Peter, and Aris. However, she does not accept Aris was there as his principal home during September 2021.*

In relation to tenant conduct:

- (e) *She alleges poor conduct by the applicants by not keeping the kitchen clean*

In relation to her conduct:

- (f) *She asserts she was a good landlord*

In relation to her finances:

- (g) *If RRO award is made, she asks that a low amount is awarded as she cannot afford the amount demanded.*

33. In oral submissions, Mr Brown asks the Tribunal to consider their written submission and highlighted the issue of Aris' occupation at the property and that if he only occupied for intermittent weeks, he should not be counted as a permanent occupier. Further, he asserts that the defence of reasonable excuse is made out because the respondent was misled by Your Move. Although he acknowledges that ignorance of the law is not a defence, he asks the Tribunal to also consider the difficult position the respondent found herself in due to Covid when she was not able to find guests to occupy the guest house, and in that context, she entered the arena of long term letting in order to survive because of commercial desperation.

34. Mr Brown acknowledged that the financial circumstances are a vexed area because of the information that came to light today, but reports that

only two people are currently occupying rooms in the property by way of an Air BnB booking.

FINDINGS

35. The Tribunal finds that during the period 20/09/2021 until 19/02/2022 there were at least 5 people living at the property as their only or principal home, paying rent or licence fees to the respondent for occupation for exclusive occupation of their room, with shared facilities of the kitchen.

Occupier	Room number	Period of occupation	Rent/licence fee paid
Aris	1	10/09/2021-10/03/2022	£800 pcm
A1 & A2	6	20/09/2021-19/02/2022	£950 pcm
Anton & Peter	2A	03/10/2021-02/12/2021	£950 pcm
Woman from Saudi Arabia	4	November 2021- August 2021	£50 per night
Man from Saudi Arabia	Room 5 Room 8	November 2021-May 2022	£50 per night for the first month for room 5, thereafter: £900 pcm for the remainder of the term to occupy room 8

36. The Tribunal finds that the respondent landlord had control of the property and failed to apply for the requisite mandatory HMO licence.

37. The respondent does not have a reasonable excuse for not making an application and for having control of an HMO that required a licence.

- (i) If she was poorly advised by Your Move, she nevertheless made the decision, having been made aware that she was entering the territory of being an HMO, to continue to enter into AST agreements with 5 people, and later let two other rooms on long term licences.
- (ii) She has not taken any action against Your Move

38. A1 and A2 paid rent of £950 pcm from 20/09/2021 until 19/02/2022. That rent included utilities.

39. The Tribunal found beyond reasonable doubt that the respondent was in breach of the requirement to licence the property under the mandatory HMO licensing requirements based on the occupation set out in the table above

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

41. 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.

42. The Tribunal do not accept that the applicants demonstrated poor conduct. While there may have been some conflict between the applicants and the respondent in relation to her strict requirements for cleaning the kitchen, the conflict appeared to arise as a result of the respondent's previous role as the manager of a guest house, not having regard to occupiers under a tenancy agreement. The applicants on the other hand were renting a room in what was in effect a shared house with shared kitchen facilities and had not anticipated the micro management of their use of the kitchen.

43. In relation to the cockroaches, there is insufficient evidence to find that there was an infestation, and the wires in the kitchen, whilst somewhat of an eyesore did not appear to create a hazard to the applicants. The Tribunal therefore finds no poor conduct by either party, other than the poor conduct by the respondent in not applying for the requisite HMO licence.

44. There is no evidence to demonstrate that the landlord has been prosecuted.

45. In submissions, the respondent's representative sought to assert the poor financial circumstances of the respondent. The Tribunal found this inconsistent with her situation of having owned the property for 17 years and using it to create income from a guest house for that period at not insignificant levels of charges/rents. That was rejected. However, the

Tribunal do accept that Covid may have presented her with difficulties when rooms could not be let.

46. In relation to utilities, it was submitted that the respondent paid £1,073 pcm for electricity. The Tribunal found that these were very high amounts and did not reflect the bills provided. Those were electricity bills for January at £680, for February £1075 and £772 for various other periods. The Tribunal took a middle view on the electricity costs and estimated these to be £800 pcm. That equates to a charge of £72 per room per month (for each of the 11 rooms)

47. It was submitted that the bills for gas were £700-800 pcm. The Tribunal found that the bills did not reflect this. Although there were various bills submitted, the highest one appeared to be £474.34 with lots of other small bills which appeared to be for the same period. The Tribunal took a view that £500 pcm for the property was likely. That equates to a charge of £45 per room per month.

48. The net monthly rent paid by the applicants for the period 20/09/2021 – 19/2/2022 was therefore £833.

49. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21, we consider that a fair award should be made to the Applicants in the sum of 70% of the total amount of rent paid for the period. Accordingly, we find that an RRO should be made against the respondent in the sum of £2,915.50 which should be paid to the Applicants in the following proportions:

- (i) To Victoria Alcock Rodriguez (A1) the sum of £1,457.75
- (ii) To Owen Shann (A2) the sum of £1,457.75

50. The Respondent is also ordered to repay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Judge D. Brandler **Date:** 24th February 2023

ANNEX - RIGHTS OF APPEAL

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

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

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

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

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

(9) The conditions are—

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

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

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

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

Section 43 Making of rent repayment order

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

Section 44 Amount of order: tenants

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

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.