



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

Case Reference : **LON/00AG/HMF/2023/0007**

**HMCTS code
(paper, video,
audio)** : **V - Video**

Property : **43, Frognal Court, Finchley Road,
London. NW3 5HG**

Applicants : **(1) Neal Patel
(2) Akhil Varma Budharaju
(3) Ravi Shah**

Representative : **Mr. G. Morris of Flat Justice CIC**

Respondent : **Mr. Simon Freed**

Representative : **Not represented**

Type of Application : **Application for a rent repayment order by
tenants**

Tribunal : **Tribunal Judge S.J. Walker
Tribunal Member Mrs. L. Crane MCIEH**

**Date and Venue of
Hearing** : **20 June 2023 – video hearing**

Date of Decision : **1 July 2023**

DECISION

- (1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay £20,160 to the Applicants.**

- (2) Pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal orders that the Respondent is to re-imburse the fee of £300 paid by the Applicants in bringing this application. Payment is to be made within 28 days.**

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”). They seek an order in respect of 12 months’ rent for the period from 1 September 2021 to 31 August 2022.
2. The application was made on 16 December 2022 and so is in time, and alleges that the Respondent has committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) – having control or management of an unlicensed House in Multiple Occupation (“HMO”).

Procedural Background

3. In the application form the Applicants provided a correspondence address for the Respondent in Northwood, together with an e-mail address. The tenancy agreement relied on stated that under section 48 of the Landlord and Tenant Act 1987 notices could be served on the landlord by sending them to Milestone Estate Agents (“Milestone”). Correspondence in the Tribunal’s file shows that on 3 January 2023 the Applicants became aware that the e-mail address for the Respondent was incorrect. They were provided with two other e-mail addresses for him by Milestone. On 11 January 2023 notice of the application was sent by the Tribunal to those two e-mail addresses and also the e-mail address of Milestone. Meanwhile, on 9 January 2023 Milestone wrote to the Applicants, with a copy to the Tribunal, stating that they considered that their address was placed in the tenancy agreement by error, and informing the Applicants that the Respondent was using Vita Properties as an agent. On 22 February 2023 the Tribunal sent a further copy of the application to Vita, who responded on the same day stating that they no longer acted for the Respondent, but were happy to forward the documents to him.
4. Directions were made on 22 February 2023 and these were sent to the Respondent at all the e-mail addresses provided for him, including those of both Milestone and Vita Properties.
5. The directions required the parties to prepare bundles of documents. On 19 March 2023 the Applicants provided a bundle which consists of a lengthy statement of case plus 137 pages of documents. (References to page numbers in what follows are to the numbers in red in this bundle.)

A bundle was to be provided by the Respondent by 24 April 2023. No documents were received from him.

6. On 3 May 2023 the Applicants wrote to the Tribunal and applied for an order debarring the Respondent from participating in the proceedings.
7. On 18 May 2023 Judge Korn gave notice pursuant to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”) that the Tribunal was minded to debar the Respondent from taking any further part in the proceedings. He was directed to provide either his bundle or an explanation for his failure to do so by 5pm on 30 May 2023 and notified that if he failed to do so the Tribunal would proceed to debar him. This notice was sent by the Tribunal on 19 May 2023 to the same addresses as the directions. There was still no response from the Respondent.
8. On 31 May 2023 in the absence of any response from the Respondent the Applicants wrote to the Tribunal seeking confirmation that he was now debarred. On 14 June 2023 Judge Donegan made an order under rule 9 of the Rules debarring the Respondent from participating further in the proceedings.
9. Notice of the date of the hearing, which was originally to be held face-to-face, was sent to the parties on 6 April 2023 and, when the hearing was changed to a video hearing, joining instructions were sent to the parties on 14 June 2023. These too were sent to the e-mail addresses provided.

The Hearing

10. The hearing was listed for 10.00am. All three Applicants attended, as did their representative, Mr. Morris. The Tribunal were provided with a skeleton argument from Mr. Morris and a bundle of authorities. The hearing was also attended by Mr. Garson who was representing Mr. Norman Freed, who is an interested person as he has a proprietary interest in the property. The Respondent initially did not attend.
11. The Tribunal considered rule 34(a) of the Rules and was satisfied, given the background set out above, that reasonable steps had been taken to notify him of the hearing. It was also satisfied that it was in the interests of justice to proceed.
12. At some time around 10-30am the Tribunal were informed that the Respondent was seeking to join the hearing. The hearing was paused and he joined it. He informed the Tribunal that he had become aware of the proceedings the day before and that he wished to apply to lift the debarring order. On being questioned by the Tribunal he confirmed that he had, in fact, received all the e-mail correspondence set out above, but said that he was not aware of it because, inexplicably, it had been sent to his e-mail junk folder. He also confirmed that despite learning about the debarring notice yesterday, he had waited until the day of the hearing before doing anything. He also said that he very rarely checked his e-mail junk folders.

13. The Tribunal was satisfied that on the Respondent's own account he had received notice of the commencement of the proceedings, the directions, the unless order and the debarring notice. It was not satisfied that not checking his e-mail junk folder amounted to a reasonable excuse for not complying with the directions and, therefore, it refused the Respondent's application to lift the debarring order.
14. The Tribunal therefore proceeded to determine the application summarily, as permitted by rule 9(8) of the Rules. It heard from Mr. Patel, the First Applicant, who adopted his witness statement and was asked a number of questions, and it heard submissions from Mr. Morris.

The Legal Background

15. The relevant legal provisions are partly set out in the Appendix to this decision.
16. 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. These include an offence under section 72(1) of the 2004 Act. Such an offence is committed 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.
17. 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 (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).
18. In either case the building in question must be an HMO. By section 254 of the 2004 Act a building is an HMO if it meets the standard test under section 254(2).
19. A building meets the standard test if it;
 - (a) *consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
 - (b) *the living accommodation is occupied by persons who do not form a single household ...;*
 - (c) *the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;*
 - (d) *their occupation of the living accommodation constitutes the only use of that accommodation;*
 - (e) *rents are payable or other consideration is to be provided in respect of at least one of the those persons' occupation of the living accommodation; and*
 - (f) *two or more of the households who occupy the living accommodation share one or more basic amenities or the*

living accommodation is lacking in one or more basic amenities.”

20. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.
21. An offence under section 72(1) can only be committed by a person who has control of or manages an HMO. The meaning of these terms is set out in section 263 of the 2004 Act as follows;
 - “(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.
22. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it.
23. 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.
24. By virtue of the decision of the Supreme Court in the case of Rakusen -v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.
25. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the

landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period and any relevant award of Universal Credit (“UC”) paid in respect of the rent under the tenancy must be deducted.

26. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

Findings of Fact

27. On the basis of the unchallenged evidence of the Applicants the Tribunal found the following facts.
28. The property is a purpose-built 3 bedroom flat situated in the London Borough of Camden. It is jointly owned by the Respondent and Mr. Norman Freed (page 63 – 64). On 8 July 2020 the local authority made an additional licensing designation, which came into force on 8 December 2020 and remains so until 8 December 2025. The designation applies to the whole of the Borough. It applies to all HMOs occupied by 3 or more persons in 2 or more households (pages 65 to 74).
29. On 21 August 2022 the local authority confirmed that the property would require an HMO licence if occupied by three or more people in more than one household, and that no application for such a licence had ever been submitted (page 1).
30. On 1 September 2021 a tenancy agreement was entered into between “*Mr. Simon Freed trading as F&M Investments Ltd.*” and the Applicants for a term of 12 months. The rent was £2,400 per calendar month (pages 2 to 6). The Applicants all occupied the property as their main residence. They shared the same kitchen and bathroom, and they were not related to each other and were not in the same household (see witness statements at pages 78 to 85).
31. Mr. Patel was the lead tenant. He collected rent from the other two Applicants and paid it to the landlord. The bank statements provided to the Tribunal (pages 7 to 61) show this. There was initially some confusion about the first payment, which was made to Milestone Estates, as this was for £4,269.24, which is less than the first month’s rent plus a month’s deposit (see page 61). However, Mr. Patel confirmed to the Tribunal that the balance of £530.76 was paid by Mr. Shah, and this was later confirmed by a copy bank statement from Mr. Shah which was sent to the Tribunal after the hearing at its request.
32. After the initial payment to Milestone, rent was first paid to the Respondent personally on 16 October 2021 (page 18), and thereafter it was paid to Vita Properties (pages 60-61). The first rent payment was made on the day the Applicants moved in, and the Tribunal was satisfied

that all the payments were made at a time when the three Applicants were all in occupation.

Has an Offence Been Committed

33. On the basis of the findings set out above the Tribunal was satisfied that throughout the period in question the property was required to have an additional licence and that it did not have one. It follows that any person who falls within the definition of either a person having control of the property or a person managing it – as set out above – was committing an offence.
34. The Tribunal first considered whether the Respondent was a person having control of the premises. It was clear to the Tribunal that the rent was largely paid to agents acting on behalf of the Respondent, and only one payment was made directly to Mr. Freed. Assuming the rent was a rack rent, it was paid largely to Vita Properties as agent for Mr. Freed. Thus, Vita Properties are a person having control within the statutory definition. Mr. Freed was a person in control for only one month of the period in question.
35. The Tribunal then went on to consider whether the Respondent was a person managing the premises. It was satisfied that he was an owner of the premises, as shown by the title documents. The payment evidence showed that he himself received some rent from those in occupation, this being the payment made in October 2021. This is sufficient to bring him within the definition of a person managing the premises. In addition, on the evidence available to it, the Tribunal was also satisfied that Mr. Freed either received the remaining payments from Milestone or Vita acting as his agent, or would have done but for those agency agreements.
36. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not. There was insufficient evidence before the Tribunal to raise such a defence.
37. It follows therefore, that the Tribunal was satisfied that throughout the period claimed the Respondent was guilty of an offence contrary to section 72(1) of the 2004 Act.

Jurisdiction to Make an Order

38. The Tribunal then went on to consider whether or not, in the light of the case of Rakusen, it had jurisdiction to make an order under section 43 of the Act against the Respondent. This required considering whether or not Mr. Freed was the Applicants' immediate landlord.
39. In determining this question, the Tribunal needed to look no further than the tenancy agreement. This clearly states that the landlord is Mr. Simon Freed (page 3). The Tribunal noted that he is described in the tenancy agreement as trading as F&M Investments Ltd. It doubted whether a private individual could, in fact, trade as a limited company. However,

whether or not that is the case, the intention expressed in the document is clear. The landlord is Mr. Freed. Though he may use a different form of words to describe himself, he personally is the landlord. The Tribunal, therefore, had jurisdiction to make an order against the First Respondent for the period in question.

Amount of Order

40. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondent to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

41. The agreed rent was £2,400 per calendar month and the Applicants were in occupation for 12 months. All the rent for this period was paid whilst they were in occupation, so the total paid was £28,800.
42. No deductions are required for utilities, as the rent did not include them (see clause 3.2 at page 3). Therefore, the total maximum award was £28,800.

Seriousness of Offence

43. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence. In doing so the Tribunal had regard to the lengthy submissions provided by the Applicants in their statement of case.
44. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. Whilst the Tribunal accepted the Applicants' argument that a licence is not just another piece of paper, nevertheless, it considered that a reduction is justified to reflect the relative seriousness of this when compared to more serious offences. In the view of the Tribunal this would merit a reduction of 15% from the total maximum award.
45. In addition, this was also towards the lower end of the scale of offences involving a failure to licence.
46. There was some indication that Mr. Freed rented other properties elsewhere, as correspondence from his former managing agents refers to them managing "*properties*". This would suggest a slightly higher level of culpability.
47. Also, in their witness statements the Applicants raise some complaints about the condition of the property and the landlord's conduct. They complain that no gas safety certificate was provided or on display, that

they did not have an electrical installation condition report, that the landlord's details were not on display, and there was no "How to Rent" guide. There are also relatively minor concerns raised about curtains, a marble work top and a delay in fitting a door. Perhaps the most significant complaint is the absence of a fire blanket in the kitchen. The Tribunal took account of all these factors when determining the seriousness of the offence.

48. On the other hand, the Tribunal considered that, unlike many cases of this kind, there were no major structural or safety defects, such as missing fire doors, missing fire alarm systems etc. In its view a further reduction from the total maximum amount was justified on the basis that this was far from being the worst example of a section 72(1) offence. It therefore decided that a further reduction of 15% was appropriate, making a total reduction of 30%.

Section 44(4)

49. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act. There was no suggestion that there had been any bad conduct by either party, other than the aggravating features already taken into account when assessing the seriousness of the offence, and there was no evidence about the Respondent's financial circumstances. There was no evidence of the commission of any other offences by the Respondent.
50. In the view of the Tribunal, in the light of this no further adjustment in the amount to be awarded was required in either direction.
51. The Tribunal therefore decided to make a rent repayment against the Respondent for the sum of £28,800 x 70% = £20,160
52. The Tribunal was satisfied that, given the Applicants' success, it was just and equitable to make an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring the Respondent to re-imburse the Applicants with the hearing fee of £300.

Name: Tribunal Judge S.J.
Walker

Date: 1 July 2023

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.

Section 52 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.