FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMG/2023/0003**
Property	**:**	**16 Normanshire Drive, London E4 9HF**
Applicants	**:**	**Amanda Jesenska** **Miroslav Jesensky**
Representative	**:**	**Safer Renting**
Respondents	**:**	**Mohammed Yunus Butt** **Ghazala Butt**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Nicol** **Mrs L Crane MCIEH**
Date and Venue of Hearing	**:**	**10th July 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**12th July 2023**

DECISION

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1) **The Respondents shall pay to the Applicants a Rent Repayment Order in the amount of £12,480.**

2) **Further, the Respondents shall reimburse the Applicants' Tribunal fees of £300.**

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

Reasons

1. The Applicants were joint tenants from 21st December 2013 to 10th September 2022 at the subject property at 16 Normanshire Drive, London E4 9HF, a two-storey terraced house, where they lived with

their children. The Respondents are the joint freehold owners of the subject property and the Applicants' landlord.

2. The Applicants seek a rent repayment order ("RRO") against the Respondents in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

3. The hearing of this matter was in person and took place on 10th July 2023. The attendees were Ms Roz Spencer of Safer Renting, acting as the Applicants' representative, and the Respondents, represented by their daughter, Ms Sara Butt.

4. The Applicants did not attend the hearing. They currently live in Slovakia. They wanted to give evidence by video link but the Tribunal did not receive an answer from the Slovakian authorities as to whether it was permitted for evidence to be given to an English tribunal from their territory. Ms Spencer said they could not afford the airfare to attend in person. Unfortunately, this means that the Respondents and the Tribunal were denied the opportunity to test their evidence (both Applicants had provided witness statements) which inevitably means that it must carry significantly less weight in the Tribunal's consideration of all the evidence.

5. The documents before the Tribunal consisted of:

- The Applicants' bundle of 88 pages; and
- The Respondents' bundle of 146 pages.

The offence

6. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondents were guilty of having control of a house which is required to be licensed but is not so licensed, contrary to section 95(1) of the Housing Act 2004 ("the 2004 Act").

7. In April 2015 the local authority, the London Borough of Waltham Forest, designated its entire district as an area for Selective Licensing of rented properties. When this scheme expired on 31st March 2020, it was replaced with one covering 18 out of 20 of the borough wards starting on 1st May 2020 for a period of 5 years. The subject property is within one of those 18 wards, Larkswood, and has clearly been within each scheme since their inception. However, by email dated 14th December 2022, Waltham Forest confirmed that the Respondents had not applied for a licence until 16th February 2022 but that it was refused on 17th October 2022.

8. The Respondents argued that they applied for a license as soon as Waltham Forest made them aware of the requirement and it was Waltham Forest's fault that they did not apply earlier because Waltham

Forest had failed to comply with their statutory obligation to secure the effective implementation of their licensing regime.

9. However, as the Tribunal explained to the Respondents during the hearing, the Tribunal is familiar with the extensive efforts local authorities, including Waltham Forest, go to in order to bring licensing requirements to the attention of local landlords, e.g. the Applicants included in their bundle a press release about it issued by Waltham Forest. Such efforts include mailing known landlords and landlord organisations and placing news stories in relevant local newspapers and other publications. The efforts made when the first scheme was introduced would also have been repeated when the second scheme came in.

10. The Respondents pointed to an email the First Respondent wrote to Waltham Forest's Revenue Services department on 14th December 2013 in which he referred to the fact that the property would be let out. The implication was that Waltham Forest knew that the Respondents were landlords but did not notify them when the licensing scheme came in. However, Revenue Services is not the department which runs the licensing scheme. Nor is Revenue Services likely to have stored this data at all, let alone in a way accessible to the licensing department.

11. Becoming a landlord is a serious undertaking – a landlord can literally hold the lives of their tenants and their families in their hands. It is not only that ignorance of the law is no excuse but that it is incumbent on landlords to familiarise themselves with the legal requirements to which they are subject. They are not entitled to keep quiet and wait until the local authority catches up with them. The fact that the Respondents previously employed agents, Kings, during the first year of the Applicants' tenancy indicates that they were aware that there may be matters outside their knowledge with which professionals may provide some assistance. However, when the Respondents decided to manage the property themselves, principally through Mr Butt, the First Respondent, they did not implement any system for acquiring or updating relevant knowledge. This would include, for example, subscribing to relevant publications or joining organisations or mailing lists for landlords. They did not even take legal advice until very recently, judging it to be too expensive despite not having even enquired how much it might cost.

12. The Respondents appeared to be under the impression that they could only be guilty of an offence under section 95(1) of the 2004 Act once the local authority had informed them specifically of the licensing requirements. That is not correct. It is a defence under section 95(4) of the 2004 Act that a landlord had a reasonable excuse for having control of or managing a house which is not licensed but these circumstances do not come close to establishing such a reasonable excuse. Above all else, the Respondents in this case had over 6 years to make themselves aware of their licensing obligations but at no time did they even try.

13. It is also a defence under section 95(3)(b) of the Act that a licence application has been made. Although it was eventually refused due to the Respondents' failure to respond to requests from Waltham Forest for further information, the Respondents did apply on 16th February 2022. However, the Applicants' claim is for an RRO calculated by reference to the maximum 12 months up to this date so this defence is of no assistance to the Respondents. The Respondents thought that the claim had to be limited to the 12 months immediately prior to the Tribunal application but they confused the maximum period for calculating the RRO with the time limit for applying to the Tribunal.

14. Therefore, the Tribunal is satisfied so that it is sure that the Respondents have committed the offence of having control of the property which was required to be licensed but was not. Further, the Tribunal is satisfied that they were committing this offence from the commencement of the first licensing scheme in 2015 until the Applicants left in 2022, including the period of claim, namely the 12 months to 16th February 2022.

Rent Repayment Order

15. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make a RRO on this application. The Tribunal has a discretion not to exercise that power but, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO nor did the Respondents put any forward.

16. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation. The law was changed after *Parker v Waller* by the 2016 Act and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 14. … under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits.
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> 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. …

17. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

> 43. … "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 … is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.
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> 50. I reject the argument … that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

18. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 15, Judge Cooke stated,

> it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it.

19. The current Tribunal finds it difficult to follow this reasoning and cannot find the basis for the inference in Fancourt J's judgment in *Williams v Parmar*. Although RROs are penal, rather than compensatory, they are not fines. Levels of fines for criminal offences are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. In this way, the courts ensure that there is consistency in the amount of any fine – each person convicted will receive a fine at around the same level as someone who committed a similar offence in similar circumstances.

20. However, an RRO is not a fixed amount. The maximum RRO is set by the rent the tenant happened to pay. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

21. For example, in *Raza v Anwar* (375 Green Street) LON/00BB/HMB/2021/0008 the Tribunal held that, as well as having control of and managing a house in multiple occupation which was required to be licensed but was not so licensed, contrary to section 72(1) of the 2004 Act, the landlord was guilty of using violence to secure entry to a property contrary to section 6 of the Criminal Law Act 1977 and unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. Nevertheless, the RRO was for only £3,600 because the rent was so low at £300 per month. The Tribunal commented at paragraph 57 of their decision:

> The maximum amount of the RRO is in no way commensurate with the seriousness of [the landlords'] behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it.

22. In the Tribunal's opinion, there is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO and section 44(3) finds expression in that way. Further, the Tribunal cannot find anything in Fancourt J's judgment in *Williams v Parmar* to gainsay this approach.

23. Judge Cooke went on in *Acheampong* to provide guidance on how to calculate the RRO:

> 20. The following approach will ensure consistency with the authorities:
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> a. Ascertain the whole of the rent for the relevant period;
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> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
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> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the

seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

24. The whole of the amount paid by the Applicant for his occupation of the property was £15,600. The Applicants' representatives included calculations for part of the month at each of the start and the end of the period of claim which resulted in a slightly higher figure. This is inappropriate. The Applicants paid rent at £1,300 per month so that 12 months' rent is £15,600. It would be outside the statutory scheme to use any higher figure.

25. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke's reasoning. However, the Applicants' rent was not inclusive of any utilities so there are no deductions to be made on this count.

26. The next step is to consider the seriousness of the offence. The Tribunal considers that the fact that the Respondents had control of and managed a property for such a long time without even making any efforts to apprise themselves of their obligations, let alone to apply for a license, puts this at the serious end of the spectrum for the offence under section 95(1) of the 2004 Act. Nevertheless, the Respondents made a number of points in mitigation:

(a) They are not "career landlords". They bought the property using savings earned in Mr Butt's career as a kitchen designer/salesman, refurbished it and rented it out from 2007.

(b) The Respondents are pensioners on a limited income.

(c) In 2015, the Respondents dispensed with the services of their agents, Kings, and the First Respondent took over management of the property. In his witness statement at paragraph 25, the First Respondent said that he would have expected his agents to apply for any necessary licence but Waltham Forest's licensing scheme only entered into force after Kings had left the scene. This only emphasises the fact that, when the Respondents decided to dispense with the assistance of professionals, there was all the more reason for them to make efforts to ensure they knew what was expected of them as landlords by the law and any regulatory authorities.

(d) It was not in dispute that the relationship between the parties was good until December 2021 when the Respondents and their daughter, Ms Butt, visited the property to serve a section 21 notice precedent to evicting the Applicants.

(e) The Respondents claimed that there were "no issues" during the Applicants' 9 years as their tenants. However, during their evidence

before the Tribunal, it became clear that this was not the case. The First Respondent admitted that the Applicants had complained about various matters during the tenancy, including the dilapidated and unsafe state of the conservatory, fuses blowing in the extension built to replace the conservatory, condensation in the windows and the garden fence falling down. He modified his evidence to suggest that none of these were major issues while contradicting himself by saying he had to take out an additional bank loan to pay for £15,000 of works to address the dilapidated conservatory. His explanation for the blowing fuses, that the Applicants had loaded too many appliances onto the sockets, also did not obviate the point that the complaint was serious. It was clear to the Tribunal that the Respondents were trying to present a misleading picture of what happened during the tenancy in order to minimise the prospects of adverse findings by the Tribunal. Even when the Tribunal confronted the First Respondent and his daughter, Ms Butt, who also gave evidence, with their own contradictory statements, they demonstrated extreme reluctance to admit anything that might possibly be adverse to them and attempted to trivialise anything they might be regarded as having done wrong. Honesty in witnesses is often measured in the ability to concede points which go against them when the evidence is clear and the reluctance of the First Respondent and Ms Butt to do so undermined their credibility.

(f) The Respondents accommodated the Applicants' requests to install vegetable beds and a shed in the garden, to plant a tree and to change the day of the month when rent was paid and then took no action after the end of the tenancy to recover costs incurred in addressing problems arising from the vegetable beds and the tree.

(g) The rent stayed at the original £1,300 per month throughout most of the Applicants' tenancy because the Respondents knew the Applicants could not afford more. The Respondents said this was below market rent but it is notable that, when they tried to increase the monthly rent to £1,850, the Applicants successfully applied to the Tribunal for a finding that the rent sought was higher than the rent which the Respondents might reasonably be expected to be able to obtain and it was reduced to £1,710. The Respondents rejected the suggestion that they raised the rent in order to encourage the Applicants to leave and suggested it was merely to cover increasing mortgage instalments. However, according to their own evidence, those instalments had increased from £633.68 per month to £853.60 in August 2021, over 7 months before they sought the rent increase in March 2022 which itself was just one month before they expected the Applicants to leave on expiry of the second section 21 notice they had served.

(h) In December 2021, the First Respondent went to hospital for tests and was told to avoid stress, although the Respondents did not provide any evidence of health issues for either of them (or for their daughter who claimed her mental health was affected). It was this which prompted the Respondents to involve their daughter, Ms Sara Butt, in the management of the property and to seek the Applicants' eviction.

(i) Waltham Forest inspected the property but did not find any hazards under the Housing Health and Safety Rating System nor exercise any of their enforcement powers under the Housing Act 2004, implying that the property was in at least adequate condition. The Tribunal is not satisfied that any such implication may be made. The officer who inspected the property was the Tenancy Relations Officer, not anyone from the departments which deal with licensing or other enforcement of the Housing Health and Safety Rating System. As was pointed out to the Respondents during the hearing, the Tribunal's knowledge and experience of local authority practices would suggest that, other than hazards of an obvious and serious nature, a TRO would not be on the lookout for anything to refer to his colleagues. The fact that Waltham Forest have not carried out an enforcement inspection is more likely attributable to the fact that the Applicants were due to leave the property and did so in September 2022. Local authority resources in this area are so stretched that they have to prioritise those cases they regard as more significant, for example where the tenants are expected to continue living at the relevant property indefinitely.

27. The Respondents also accused the Applicants of poor conduct:

(a) In January 2022, the Respondents and Ms Butt, this time also accompanied by Ms Butt's husband, Mr Mustafa Rashid, visited the property at a pre-arranged time to talk to the Applicants about when they were leaving in accordance with the section 21 notice served the previous month. The Applicants objected that the section 21 notice was invalid. In their witness statements, the Applicants accused Ms Butt of screaming at them. The Respondents and Ms Butt asserted that both Ms Butt and the First Applicant, Ms Jesenska, raised their voices at each other, eventually causing Ms Butt to cry. Taking into account the Applicants' lack of live evidence and the consistency of the Respondents' evidence, the Tribunal is inclined to prefer the Respondents' account of this incident but the fact is that neither side comes out of it well. The landlords brought 4 people to a discussion with their tenants about how they were going to evict their tenants. It is unsurprising that fears were raised and tempers were frayed. The Tribunal cannot see how this incident should affect the amount of the RRO since such fault as there is lies both sides.

(b) Following this meeting, Ms Butt says her mental health was affected adversely. Mr Jeffrey, the principal at the school where she works as an assistant headteacher, wrote a letter saying that she seemed fragile and was crying several times. Ms Butt says this was the consequence of the Applicants bullying and harassing her. However, in her evidence before the Tribunal, it became clear that the Applicants did not bully or harass her in any way whatsoever, albeit that Ms Butt was very reluctant to concede any relevant facts, no matter how clear from the evidence. For example, she said that the Applicants phoned her at school to harass her. It turns out that there was one phone call in which they asked for her. The Applicants did not say anything adverse about Ms Butt during the call and did not follow it up. Further, according to Ms Butt, the main problem which caused her upset was Safer Renting corresponding

with her on the Applicants' behalf. On reviewing that correspondence, it is clear that Safer Renting acted entirely reasonably as their client's representative and did nothing deserving of criticism, let alone an allegation of bullying or harassment. The Applicants were concerned about the effect of the Respondents' action on their children and involved the local authority. The local authority's designated officer (LADO) made short enquiries with both parties but didn't pursue it. While Mr Jeffrey said this was a serious matter for a teacher, there is nothing to suggest that the Applicants' actions were malicious or that they had any meaningful consequences.

(c) Both parties sought to involve the police after the January meeting. In speaking to Ms Butt, the police mentioned the possibility of a non-molestation order. The police tried to speak to the Applicants but they were out on the two occasions they visited the property and the police made no further efforts. The Respondents tried to suggest that this was tantamount to proving that the Applicants had done something wrong and that a non-molestation order was going to be served on them. In actuality, this evidence goes nowhere near establishing anything of the sort.

(d) The Respondents accused the Applicants of making numerous "falsifications". For example, the Applicants said in their witness statements that the washing machine provided at the start of the tenancy got so hot it almost caught on fire. When the Respondents checked whether Kings had any records, all they had was notes that the washing machine was taken away because it never worked. Quite apart from the fact that Kings's evidence is multiple hearsay, it is not inconsistent with the Applicants' case. To suggest that this is somehow evidence of the Applicants lying is fanciful. The Tribunal is satisfied that the parties had different perceptions of a number of matters but there was nothing in them that would affect the outcome of the RRO application.

(e) The Respondents said that the Applicants had alleged that they were unlawfully evicted. The only evidence of this was a paragraph in the directions issued by Judge Hamilton-Fairey on 2nd March 2023. In fact, this was the judge's error. The Respondents would have been aware, having all the relevant documents in their possession, that the Applicants have never alleged this.

28. The Tribunal is not satisfied that either the Applicants or the Respondents have established any conduct relevant to the amount of the RRO under section 44(4)(a) of the 2016 Act other than the following matters already detailed above:

(a) The Respondents were in breach of their licensing obligations for over 6 years, in large part by making no effort whatsoever to apprise themselves of their obligations as landlords. This is not mitigated by their age and lack of experience as landlords since such lack of experience is exactly the reason why they should have at least tried to improve their state of knowledge.

(b) The Respondents have sought to boost their defence by creating misleading and exaggerated versions of what happened and refused, or at least were extremely reluctant, to back down when their own evidence gave a more accurate picture.

29. The Respondents gave some evidence as to their financial circumstances, as a result of which the Tribunal accepts that the First Respondent is a pensioner who had to continue to pay the mortgage. They provided a table showing the amount of the First Respondent's pension and the mortgage instalments for the period from 1st February 2021 to 1st March 2022. These showed the mortgage instalments remaining steady to August 2021 at £633.68 per month and then rising eventually to £930.20, ahead of the monthly amount for the pension of £780.24, rising to £798.24 from June 2021. They also produced supporting bank statements.

30. However, the Respondents provided no further evidence of their income or expenditure, assets or debts. In his witness statement, the First Respondent claimed that most of the rent went on the mortgage instalments but their own table demonstrated that the instalments were less than half of the rent for at least some of the time and likely for most of the tenancy since interest rates have only increased relatively recently.

31. An RRO is meant to be punitive. Therefore, in taking into account the landlord's financial circumstances, the Tribunal is not considering whether it is affordable but, rather, whether the amount of the RRO is proportionate not only to the offence but also to the perpetrator's financial situation – what is punitive to someone of substantial means may be excessive for someone of limited means.

32. In the Tribunal's opinion an RRO of the full amount of £15,600 is not proportionate, bearing in mind the purpose of the legislative provisions, either to the Respondents' offence or their financial circumstances. Therefore, the Tribunal has decided to award a sum equivalent to 80% of the full amount, which comes to £12,480.

33. The Applicants paid £300 in Tribunal fees and asked the Tribunal to exercise its power to order the Respondent to reimburse them. The application has succeeded. In the circumstances, the Tribunal is satisfied that it is appropriate to order reimbursement of the fees.

Name: Judge Nicol **Date:** 12th July 2023

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 95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) 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 90(6), and

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

(3) 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 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

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

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) 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.

(7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) In subsection (8) *"relevant decision"* means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

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

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

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

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

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

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

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

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

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

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

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

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

Section 43 Making of rent repayment order

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

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

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

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

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

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

Section 44 Amount of order: tenants

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

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

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

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

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

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

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

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

(b) the financial circumstances of the landlord, and

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

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.