FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BB/HMF/2023/0033**
Property	**:**	**3 Fox Close, London E16 1NU**
Applicant	**:**	**Chukwunyere Peter Onuoha**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Daisy Ojukwu**
Representative	**:**	**Goldfield Solicitors LLP**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Ms M Krisko FRICS**
Date and Venue of Hearing	**:**	**13th July 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**17th July 2023**

DECISION

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1) **The Respondent shall pay to the Applicant a Rent Repayment Order in the amount of £6,480.**

2) **Further, the Respondent shall reimburse the Applicant's Tribunal fees of £300.**

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

Reasons

1. The Applicant has lived at the subject property at 3 Fox Close, London E16 1NU, a 3-bedroom two-storey maisonette in a 4-storey purpose-built block, since 8th October 2017. The Respondent is the leasehold owner of the property and the Applicant's landlord.

2. The Applicant seeks a rent repayment order ("RRO") against the Respondent 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 13th July 2023. The attendees were:

   - The Applicant;
   - Mr Cameron Neilson of Justice for Tenants, representing the Applicant;
   - Mr Matthew Conwell, also from Justice for Tenants;
   - The Respondent;
   - Mr Charles Manna, counsel for the Respondent;
   - Mr Bruce Ighalo, from Goldfield Solicitors LLP; and
   - Ms Sophie Wahab, a friend of the Respondent.

4. Both parties gave evidence on their own behalf and were subject to cross-examination. There were no other witnesses.

5. The documents before the Tribunal consisted of:

   - The Applicant's bundle of 129 pages;
   - The Applicant's Response to Respondents Submission;
   - A skeleton argument on behalf of the Applicant;
   - The Respondent's bundle of 76 pages; and
   - A skeleton argument on behalf of the Respondent.

6. Both parties sought permission to introduce and rely on further evidence only recently provided. By letter dated 11th July 2023 the Respondent's solicitors sought permission to file and serve a witness statement dated 6th July 2023 from the Respondent's son, Mr Ashley Ojukwu. In fact, Mr Ojukwu did not attend the hearing and Mr Manna did not pursue the application.

7. Also by letter dated 11th July 2023, Justice for Tenants asked that a screenshot of text messages should be allowed in. Mr Manna did not object. The Tribunal granted permission for the Applicant to rely on it.

The offence

8. 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 Applicant has alleged that the Respondent was guilty of having control of and managing an HMO (house in multiple occupation) which

was required to be licensed but was not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

9. The property is located in the district of the London Borough of Newham which had an Additional Licensing scheme in force from 1st January 2018 to 31st December 2022. It covered all rented HMOs in their district (except for one ward) other than HMOs which were already required to be licensed under the mandatory statutory scheme.

10. An HMO is defined in section 254 of the 2004 Act. Under the standard test, the property must satisfy the following criteria:

    (a) *The property consists of one or more units of living accommodation not consisting of a self-contained flat or flats*. The subject property consisted of 3 units of living accommodation, i.e. bedrooms, on the upper floor, none of which were self-contained.

    (b) *The living accommodation is occupied by persons who do not form a single household*. It is not in dispute that, apart from a recent period where the Applicant and his daughter were the only occupants, there have been occupiers of the other rooms who are not related to the Applicant and form separate households.

    (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*. There is no suggestion, let alone any evidence, that any of the occupiers had any other residence in addition to the subject property.

    (d) *Their occupation of the living accommodation constitutes the only use of that accommodation*. Similarly, there is no suggestion, let alone any evidence, that their occupation is other than the only use of the subject property.

    (e) *Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation*. It is not in dispute that the Applicant paid rent for his and his daughter's occupation.

    (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*. It is not in dispute that the property had one kitchen and one bathroom shared by all the occupants.

11. Mr Manna submitted in his skeleton argument that, to constitute a HMO, there must be at least 3 separate households. The parties were ready to dispute the date when one of the tenants, Ms Sara Olumide, left the property (the aforementioned screenshot of text messages was relevant to this issue) – the Respondent said 21st June 2021 and the Applicant said August 2022. If the Respondent had the right date, it would mean that there had been only 2 households in the property for

the majority of the period the Applicant has claimed for the calculation of the RRO, namely 10th April 2021 to 9th April 2022.

12. However, the above definition of an HMO only requires 2 separate households. On the Respondent's own case, there were at least two separate households in the property from before the Additional Licensing scheme came in until August 2022 so that the property satisfied the definition of an HMO for the whole of that period. This would not be a sufficient number of households to bring the property within the mandatory statutory scheme but it is sufficient for Newham's Additional Licensing scheme. Further, therefore, the property should have been licensed under the Additional Licensing scheme throughout that period.

13. It should be noted that, on 13th December 2022, Newham served a Notice of Intention to impose a financial penalty on the Respondent for failing to licence the subject property under their Selective Licensing scheme contrary to section 95(1) of the 2004 Act. Therefore, it would seem that the property needed to be licensed even with only the Applicant and his daughter in the property. However, the Applicant has not alleged any offence under section 95(1) in these proceedings and so the Tribunal cannot make its own finding that the Respondent has committed any such offence. Further however, this remains relevant to the issue of the Respondent's conduct as considered further below.

14. There are two defences against a charge under section 72(1) of having control of or managing a property which should have been licensed but was not:

    (a) Under section 72(4), where the landlord has applied for a licence or there is a temporary exemption notice ("TEN"). This would apply for the period from August 2020, when the Respondent applied for a licence, to 11th March 2021 when it was refused. The Applicant did not apply at any other time for either a licence or a TEN.

    (b) Under section 72(5), where the Respondent has a reasonable excuse. The Respondent is legally represented but has not sought to claim that she has a reasonable excuse. Nevertheless, she has claimed that she was ignorant of the licensing requirements and the Tribunal has considered whether it amounts to a reasonable excuse in the circumstances of this case. The Tribunal is satisfied that it does not. It is incumbent on those who take the serious step of becoming landlords to make themselves aware of their obligations and then to keep up-to-date with relevant changes. There is a number of ways to do this but the Respondent did not do anything likely to be effective. She attended the local community centre where there were meetings discussing levels of crime, such as break-ins, but she made no attempt to find out anything about the law or regulation relating to landlords. When she did become of aware of her licensing obligations, she made her application but then did nothing when it was refused, e.g. by re-applying or applying for a TEN. Nothing in these circumstances can possibly amount to a reasonable excuse.

15. For these reasons, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of having control of and managing an HMO which was required to be licensed but was not.

Rent Repayment Order

16. 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.

17. 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 has changed since *Parker v Waller* 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. …

18. 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.

> 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.

19. 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.

20. The current Tribunal finds it difficult to follow this reasoning. 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.

21. 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.

22. 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 an HMO which was required to be licensed but was not so licensed, 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.

23. 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.

24. 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:
>
> 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.
>
> 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:
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> 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).

25. The Applicant claims a RRO in respect of the 12 months from April 2021 to April 2022. During that period, he paid rent of £720 per month. Therefore, the maximum possible amount for a RRO would be £8,640.

26. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is common, as happened in this case, for a landlord to include the utility charges within the rent. However, this does not only benefit the tenant. Landlords do not include such services in the rent out of charitable goodwill but for sound commercial reasons such as

increasing the chances of achieving a letting, attracting and retaining desirable tenants, and maintaining control of the identity of suppliers to the property. The same reasoning applies to the provision of furnishings, including white goods, but Judge Cooke does not extend her reasoning to such matters. Obviously, tenants control the rate of consumption of such services but this is necessarily built in to the landlord's calculations when offering them within the rent.

27. Further, the Tribunal cannot identify any support within the statute for this approach to utility charges. Nor does Judge Cooke. On the contrary, the legislation refers to "the rent" and not "the net rent". "Rent" has a clearly defined meaning in the law of landlord and tenant, namely "the entire sum payable to the landlord in money" (see *Megarry on the Rent Acts*, 11th Ed at p.519 and *Hornsby v Maynard* [1925] 1 KB 514). It is also stated in *Woodfall: Landlord and Tenant* at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord." Parliament would have had this in mind in enacting the legislation.

28. In this case, as already referred to, the Respondent paid for gas and electricity used by the Applicant through a pre-payment meter. The Respondent claims that the Applicant abused this by having the heating on during the day "full blast" while the Applicant accuses the Respondent of failing to top up the meter on occasion, leaving him and his daughter without heating or hot water.

29. The Tribunal was not impressed with the oral evidence given by either witness. The Applicant pointed to screenshots of texts between the parties which suggested that the Respondent was slow to respond to maintenance requests or was not responding at all. Mr Manna asked the Applicant whether the screenshots showed all the relevant texts between the dates displayed there. If the screenshots were accurate and the texts had not been edited, then the answer was a simple "yes". Despite the Tribunal painstakingly explaining this to the Applicant, he refused to say yes without first checking his phone (the Tribunal refused to allow him to do so, given that anything different from the screenshots would have constituted new evidence of which the Respondent would have had no notice). He insisted on this even when the Tribunal pointed out that he was implying that the screenshots were possibly inaccurate. Even without this issue, he was extremely vague on dates and, despite alleging that the Respondent did not respond properly or at all to his complaints about repairs or the lack of heating or hot water, he was unable to say how long it took the Respondent to resolve any issue.

30. On the other hand, the Respondent displayed a profound ignorance of what it meant to be a landlord. The Tribunal asked her why she did not take any steps to gain the knowledge she needed but she literally had no

answer. Her principal response to problems to which her ignorance gave rise would appear to be to do nothing:

(a) She was told she needed planning permission to run an HMO. The planning department told her that they would be unlikely to grant it. Her response was that she did not seek professional advice or even try to apply for planning permission.

(b) When her licence application was refused, she did not ask Newham why and did not attempt to apply again.

(c) She served section 21 notices on her tenants, saying she intended to evict them so that she would not need a licence. The notices gave the tenants 6 months but she made no effort to get a licence or a TEN for at least that period.

(d) The notices did not appear to be valid, not being in the prescribed form or having the explanatory notes which should be attached. The Respondent did not know this but in any event, when they expired, she did nothing to enforce them. It was coincidence that all her tenants left except the Applicant and his daughter.

(e) She conceded that there was a serious leak from the bathroom upstairs at the property into the hallway below. Undated photos showed severe damp staining and wallpaper hanging from the walls. The Applicant complained of damp throughout the property, possibly fuelled by this damp issue. Instead of fixing it, the Respondent decided to do nothing about it rather than to have the bathroom out of action for a few days.

31. In the circumstances, the Tribunal could not be satisfied that the Respondent was at fault in relation to the utilities to the degree of which the Applicant complained nor that the Applicant abused the services provided to him in any way. The Tribunal declines to make any deduction in relation to utilities.

32. The next step is to consider the seriousness of the offence. Judge Cooke referred to the maximum fine for any relevant offences but more significant are the matters already considered above and the further matters below.

33. The Respondent appears to have fallen into being a landlord. This is the only property she has ever rented out. She initially just took in lodgers from 2015. In 2017 she moved to live at her mother's place in order to care for her and rented the remaining rooms out, thereby becoming a fully-fledged landlord of a HMO. However, she did not really separate herself from the property as her residence. She left some of her belongings behind. She even said she left all the copies of any gas safety or electrical certificates in the property, entirely unsecured and accessible to anyone, and now says she can't find them. When the Tribunal asked her whether she thought she should have kept her own copies of important documents safe and secure somewhere, she just looked blankly, clearly never having thought of this before.

34. There seems to be an attitude found amongst some landlords and agents that licensing is merely bureaucracy looking for reasons to justify itself so that, if a property appears to the owners and occupiers to be in reasonable condition, then that would mean that being without a licence barely qualifies as a criminal offence at all. This constitutes a serious misunderstanding of the licensing system and how it works. Mr Manna stated that the Respondent did not have such a misunderstanding but she nevertheless had no understanding of the importance or significance of licensing.

35. The process of licensing effectively provides an audit of the safety and condition of the property and of the landlord's management arrangements, supported wherever and whenever possible by detailed inspections by council officers who are expert in such matters. Owners and occupiers are not normally expert and can't be expected to know how to identify or remedy relevant issues without expert help. It is not uncommon that landlords are surprised at how much a local authority requires them to do to bring a property up to the required standard and, in particular, object to matters being raised about which the occupiers have not complained. In the absence of comprehensive expert evidence or evidence that the local authority has inspected and is satisfied, a Tribunal will normally be unable to assure itself that a property meets the relevant licensing standards.

36. If a landlord does not apply for a licence, that audit process never happens. As a result, the landlord can save significant sums of money by not incurring various costs which may cover, amongst other matters:

(a) Consultants – surveyor, architect, building control, planning

(b) Licensing fees

(c) Fire risk assessment

(d) Smoke or heat alarm installation

(e) Works for repair or modification

(f) Increased insurance premiums

(g) Increased lending costs

(h) Increased lettings and management costs.

37. The prospect of such savings is a powerful incentive not to get licensed. Not getting licensed means that important health and safety requirements may get missed, to the possible serious detriment of any occupiers. RROs must be set at a level which disincentivises the avoidance of licensing and disabuses landlords of the idea that it would save money.

38. The Applicant asserted that he had been a good tenant, including paying his rent, whereas the Respondent's conduct was poor in a number of respects as set out above and, further:

(a) He asserted that the Respondent had failed to provide proper fire safety. The property lacked fire doors and none of the bedrooms or the living room had smoke detectors. The Respondent denied this but did not provide any evidence. She said all the doors were fire doors but clearly did not understand what a fire door consisted of compared to an ordinary door. She conceded that the front entrance door required a key to exit but did not realise that this was unsafe in the event of a fire.

(b) He also asserted that the Respondent had failed to keep the property in repair but the Tribunal was only satisfied that this was the case in relation to the aforementioned leak from the bathroom. The Respondent did not understand that the possibility of the bathroom being inaccessible for a few days during repair works would not be an excuse for failing to do them.

39. The Tribunal is satisfied that the Respondent did not evade her licensing responsibilities in order to maximise her profit but just because she did not know what to do, initially at all but later when faced with obstacles. This is in no way an excuse for committing the offence but it is mitigation to a degree.

40. Taking into account all the circumstances, the Tribunal concluded that the Respondent should pay the Applicant a RRO equivalent to 75% of the full amount, namely £6,480.

41. The Applicant paid £300 in Tribunal fees. The Tribunal has the 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:** 17th 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 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.

(a) 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.

(b) 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.

(c) 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).

<u>Section 254</u> Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(g) it meets the conditions in subsection (2) ("the standard test");
(h) it meets the conditions in subsection (3) ("the self-contained flat test");
(i) it meets the conditions in subsection (4) ("the converted building test");
(j) an HMO declaration is in force in respect of it under section 255; or
(k) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it 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 (see section 258);
(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 (see section 259);
(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 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.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

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.