FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BB/HMB/2023/0003**
Property	**:**	**52 Wanlip Road, London E13 8QP**
Applicants	**:**	**Kingsley Onwuka** **Uyioghosa Leo Amadasu**
Respondent	**:**	**Michael Osagie**
Representative	**:**	**Church Street Solicitors**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr S Wheeler MCIEH CEnvH**
Date and Venue of Hearing	**:**	**14th September 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15th September 2023**

DECISION

The Respondents shall pay Rent Repayment Orders in the following amounts:

1) **£6,000 to the First Applicant, Mr Kingsley Onwuka; and**
2) **£6,600 to the Second Applicant, Mr Uyioghosa Leo Amadasu.**

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Respondent is the freehold owner of 52 Wanlip Road, London E13 8QP ("the property"), a two-storey terraced house. The Applicants each rented a room in the house from April 2021.

2. The Applicants have applied for rent repayment orders ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016.

3. There was an in-person hearing of the application at the Tribunal on 14th September 2023. The Applicants attended but the Respondent neither attended nor sent a representative. The Tribunal is satisfied that the Respondent was properly notified of the hearing date and proceeded in his absence.

4. The Respondent's solicitors had prepared a bundle of relevant documents consisting of 47 pages. The Applicants, representing themselves, provided a number of separate documents:

- The application form for a rent repayment order dated 6th February 2023;
- An order dated 1st March 2023 and a statement dated 11th February 2023 from the Second Applicant in related county court proceedings (claim no: K00EC896);
- A NatWest bank statement apparently showing regular monthly payments of £560 from the Second Applicant to the Respondent;
- Some emails from Mr Baljit Sheemar, a Private Housing Tenancy Liaison Officer with the London Borough of Newham;
- A document headed "FULL DETAILS OF OFFENSE FOR APPLICATION"; and
- A document headed "REASONS FOR APPLICATION".

5. During the hearing, the Applicants offered to show the Tribunal further documents but, in the absence of the Respondent, it would be unfair to take into account documents which the Respondent had no notice would be shown to the Tribunal. Therefore, the Tribunal only looked at the documents which had previously been served and filed.

6. The Tribunal found the Applicants to be consistent, credible and straightforward, mostly able to provide details when asked. They had difficulty remembering some dates and details but the imperfections in their evidence were no more than would be found in an honest witness – perfect evidence tends to come only from dishonest witnesses.

The offences

7. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants alleged that the Respondent was guilty of:

- Unlawful eviction contrary to section 1(2) of the Protection from Eviction Act 1977;
- Harassment with the intention of causing the Applicants to give up occupation of the property, contrary to section 1(3) and/or (3A) of the same Act; and

- Attempting to secure entry to the property by violence, contrary to section 6 of the Criminal Law Act 1977.

8. Based on the Applicants' evidence and the documents provided, the Tribunal found the following facts.

9. Until December 2022, there were 3 or 4 other tenants of the property in addition to the Applicants. In April 2022 the local authority, the London Borough of Newham, granted the Respondent a selective license allowing the property to be occupied by two persons. The Respondent sought to get the tenants to leave, assisting some of them into other properties he owned or managed. Eventually, only the Applicants remained.

10. The Respondent claimed in his written statement that the self-contained studio flat on the ground floor of the property was used by him as a second home where he stayed most weekends. The Applicants firmly rejected this and told the Tribunal that the Respondent used the studio flat for short-term lets.

11. The Respondent also claimed that he provided License Agreements to the Applicants "sometime in April 2021". The Applicants again firmly rejected this and said they had not seen the alleged Agreements until they saw them in the Respondent's bundle for these proceedings.

12. The Licence Agreements put the First Applicant's rent at £520 per month and the Second Applicant's at £560 per month. The Applicants said their rent was £500 and £550 per month with an additional £10 for visits by a woman to clean the property (the Applicants were not satisfied with her work and eventually persuaded the Respondent to allow them to keep it clean instead so that the £10 charge stopped). The Respondent agreed that the Applicants paid him £500 and £560 per month but claimed that the First Applicant's supposed £20 shortfall had built up to arrears of £2,400.

13. In respect of the each of the Respondent's above 3 claims, the Tribunal preferred the Applicants' live evidence over the Respondent's written statement. It is noteworthy that there was no evidence of the Respondent's alleged use of the studio flat, he did not seek to produce the Licence Agreements in other contexts (e.g. to the Council or to the police) and there is no evidence he ever raised or chased the First Applicant's alleged arrears.

14. In late January 2023, the Respondent asked when he could do some electrical work which would involve turning off the power for about 2 hours. The Second Claimant said he had a hospital appointment on 27th January 2023 so that would be a good time. On that day, at around 9:35am, the Respondent showed up as agreed. About 10 minutes later, the Second Applicant locked his room and left for his appointment, leaving the Respondent alone in the property.

15. The Second Applicant returned to the property at around 1pm. However, his key to the front door would not work and he could not get in – the lock had been changed. He called the Respondent several times but got no response. He then called First Applicant at his work to alert him as to what had happened. The First Applicant also tried phoning and sending messages to the Respondent, equally without success.

16. The Applicants phoned the police but they could not help at that stage so they decided to change the front door lock themselves. On gaining entry with a locksmith's assistance at around 4-6pm, they found all their belongings and possessions had been removed, with nothing of theirs left even in the kitchen cupboards. Only the white goods and other furnishings which had been provided by the Respondent as part of the tenancy still remained. When the Applicants went to bed that night, they slept on bare mattresses in the clothes they had been wearing that day.

17. The Applicants phoned the police for a second time and they visited at around 11pm. The Applicants explained what had happened and then the police drove them to the Respondent's home, about 3 minutes away. The Respondent was not at the property so the police left a message with another occupant. They brought the Applicants back to the property and advised them to keep trying to reach the Respondent.

18. In his written statement, the Respondent sought to justify his changing of the locks and clearing out the belongings by claiming that he thought the Applicants had moved out. He provided no evidence in support of this belief. The fact that the Applicants' belongings were still there should have been compelling evidence that they had not moved out but the Respondent did not purport to explain how he managed to reach the opposite conclusion.

19. On 28th January 2023, just before midnight, someone knocked at the front door and the Second Applicant answered it. It was a woman unknown to him who claimed that the Applicants were squatters and she would be moving in. Given what had happened, the Second Applicant was reluctant to let the woman in and told her she needed to contact the Respondent. The woman tried to force her way in and the Second Applicant tried to stop her while calling the police. At this point, there were other people coming towards the door so the Second Applicant let the woman in, locked the door and ran upstairs to wake up the First Applicant.

20. Two men then tried to force open the front door. The Applicants shouted at them that the police were on their way and they left, leaving the Applicants with the woman. While the Applicants waited for the police, the woman spent her time in the kitchen talking on the phone, apparently to her companions outside. The Applicants understood her to be the Respondent's daughter because she referred to the property as her "father's house". A short while after, the Respondent, accompanied by a man and a woman, arrived at the front door.

21. When the police arrived, they separated the two groups, with the Applicants inside the property and the Respondent and his party outside. The Applicants told the police what had happened. The Respondent and his daughter instead told the police that the Applicants were squatters who had broken in. The Respondent also claimed never to have met either Applicant before and denied taking their belongings.

22. The police asked the Applicants if they had any evidence they had been living at the property. Their paper documents had disappeared with the rest of their belongings but the First Applicant was able to show them his driving licence and, on his phone, his rent payments to the Respondent and a sample pay slip with his home address. The Second Applicant also used his phone to show bank statements and his pay slip. The police then asked the Respondent and those accompanying him to leave and follow due legal process if he wanted to evict the Applicants.

23. On 30th January 2023, the Applicants reported what had happened to Newham. Mr Sheemar advised them on their remedies and also wrote to the Respondent warning him of his obligations not to harass the Applicants and to return any belongings of theirs.

24. On 7th February 2023 the Respondent hand-delivered to the property a section 21 notice dated 3rd February 2023 for each Applicant. There have been no subsequent possession proceedings.

25. The following day a man showed up at the front door. He said he was from an agency which had been appointed by the Respondent to manage the property, although he did not show any credentials. He insisted on being allowed to come into the property but the Applicants refused. He appeared to be unaware that the Respondent had cleared out their belongings and later appears to have made efforts to persuade the Respondent to return them.

26. On the next day, 9th February 2023, the same man showed up again. This time he banged hard on the door demanding to be let in. The Second Applicant could see the Respondent's car parked nearby. He decided not to let the man in. He was then joined by another man and they jointly attempted to force the door open, only stopping when the Second Applicant started filming them on his phone.

27. The Second Applicant called the police again. When they arrived, they again instructed the Respondent, his agent and the other man to follow the correct procedure if they wanted to evict the Applicants. The Applicants have not seen the man since and believe he ceased acting as the Respondent's agent.

28. The Applicants say they were traumatised by these events. They say they were not able to sleep properly or go to work for fear of what would happen when they did.

29. Following Mr Shameer's advice, the Applicants issued claims against the Respondent in the county court (claim numbers: K00EC896 and K00EC897) for an injunction for the return of their belongings and to prohibit the harassment, for alleged breaches of the security deposit provisions in the Housing Act 2004 and for damages for breach of the covenant for quiet enjoyment, breach of contract, breach of section 3 of the Protection from Eviction Act 1977, nuisance, trespass to goods and conversion, and breach of section 27 of the Housing Act 1988.

30. The court made some directions on 28th February 2023 for both claims. During this hearing, the Respondent finally admitted that he had the Applicants' belongings although he claimed that they had been cleared out by his "maintenance man" without his consent or knowledge. He undertook to return the belongings. In the event, he did return most of them but all the food had been wasted and some clothes were never returned.

31. In March, the court issued an injunction but the Tribunal is unaware of its terms as a copy was not included in the documents before it.

32. On 5th April 2023, District Judge Redpath-Stevens ruled on the security deposit claim and ordered the Respondent to pay each Claimant £2,000, plus costs summarily assessed at £1,486.80, all to be paid by 19th April 2023.

33. The Respondent's solicitor emailed the court on 6th February 2023 claiming not to have been in attendance because the Notice of Hearing said the hearing was to be at 11am but was called at 10:30am and they missed it. The email also sought orders for a duplicate entrance key and for an order of possession. The court replied on 14th April 2023:

> The Judge has considered your email of 6 April 2023 and has directed that:
>
> "1. The Court is unable to vary an order based on a unilateral email sent on behalf of only one party, on which the other party may have something to say.
>
> 2. If the Defendant wishes that the order be varied, he should seek to agree and present the Court with a consent order, alternatively apply for variations."

34. The Respondent has done neither of those things. Instead, he has paid the judgment sum in full.

35. It appears that the balance of the Applicants' claims were settled, including the injunction being discharged, and incorporated into a Tomlin order although, again, the Tribunal is not aware of the terms because it was not included in the documents before the Tribunal.

36. Based on the above findings, the Tribunal is satisfied beyond a reasonable doubt that, on 27th January 2023, the Respondent unlawfully deprived the Applicants of their occupation of the property

by locking them out, contrary to section 1(2) of the Protection from Eviction Act 1977, albeit that they got back in through their own efforts. The Tribunal does not believe the Respondent's unsupported claim that he thought they had moved out.

37. The Tribunal is further satisfied so that it is sure that the events of 27th-29th January 2023 constituted deliberate efforts by the Respondent to interfere with the Applicants' peace and comfort with the intent that the Applicants should give up their occupation of the property, contrary to section 1(3) and (3A) of the Protection from Eviction Act 1977.

38. However, the Tribunal is not satisfied to the requisite standard that the Respondent used or threatened violence to secure entry to the property tenanted by the Applicants contrary to section 6 of the Criminal Law Act 1977. The only act relied on was the effort by the Respondent's daughter to get in through the main front entrance door despite the First Applicant's wishes that she not do so. It is not clear that her attempts to force her way in were done with her father's authority. Also, she only attempted to enter the common parts, not either of the Applicants' rooms, and it is possible she was authorised to be there. For example, if she had wanted to access the studio flat, she could only have done so via the main front entrance door and the common parts.

39. The Applicants also submitted that the Respondent had committed the offence of being in control of or managing a property which should have been licensed but was not. However, an offence has to have been committed within 12 months of the date of the Applicants' application on 6th February 2023. The Respondent was granted his licence in April 2022. It is a defence to such a licensing offence that an application for a license has been made. It is not clear when the Respondent applied for his license but it may well have been prior to 6th February 2022. In these circumstances, the Tribunal cannot be satisfied beyond a reasonable doubt that the Respondent committed a licensing offence.

Rent Repayment Order

40. 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 Rent Repayment Orders on this application. Although the Respondent has committed more than one relevant criminal offence, the Tribunal may only make one RRO for each Applicant. Rather, the commission of more than one offence is relevant to the calculation of the amount of each RRO in relation to the Respondent's conduct, as considered further below.

41. The Tribunal has a discretion not to exercise the power to make RROs. As confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. The Respondent's solicitors nevertheless argued that the Applicants' RRO application should be dismissed because the award of an RRO would duplicate the award of

damages in the county court and give the Applicants' double compensation. However,

(a) In *Parker v Waller* [2012] UKUT 301 (LC), amongst other matters, it was held that an RRO is a penal sum, not compensation. An award of damages in the county court is, with certain very limited exceptions, purely compensatory, making up for what the victim of the unlawful behaviour has lost as a result of that behaviour. An RRO is a penal sanction and whether the tenant receives an amount commensurate with any losses or an undeserved windfall is entirely irrelevant. Damages and RROs have entirely different purposes and the award of one does not mean that the award of the other results in double compensation.
(b) The Respondent failed to provide any evidence of what the county court awarded for these events or why. Even if the Respondent was right in saying that an award of damages should be taken into account in the decision to award an RRO or the amount of an RRO, the Tribunal had no information on which to base any such decision.
(c) The Tribunal understands that the parties settled the damages and injunction claims by agreement. If they had intended to cover the RRO application, they could have included words to that effect in their agreement. There is no evidence that the settlement included the RRO application or even that it was ever intended to.

42. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 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. …

43. 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.

44. 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.

45. 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.

46. 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, say, failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

47. 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.

48. 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.

49. 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;
>
> 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:
>
> 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).

50. The Tribunal accepted the Applicants' evidence that their monthly rent was £500 for the First Applicant and £550 for the Second Applicant. This means the maximum amount of the RRO over the maximum period of 12 months is £6,000 and £6,600 respectively.

51. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is 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." In any event, it is the Respondent's case that utilities were not included in the rent, as stated in the written License Agreements he produced. The Applicants said that utilities were originally included but, when they fell into dispute with the Respondent, the utility suppliers started billing them direct. In the circumstances, there is no basis for any deduction for the costs of utilities.

52. 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 various matters referred to in this decision. Under section 44(4) of the Housing and Planning Act 2016, in determining the amount of the RRO the Tribunal must, in particular, take into account the conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences.

53. As described above, the Respondent's behaviour has been unacceptable. He has committed multiple offences, deliberately sought to mislead the police and, later, the Tribunal about his actions, and obliged the Applicants to take legal action to obtain their remedies, including the return of their belongings. The fact that the Respondent has not been prosecuted or convicted for any of these matters is beside the point. The Respondent made no submissions and presented no evidence about his financial circumstances.

54. Therefore, there is no basis for making any deduction from the maximum amount of each RRO and the Tribunal has decided to make RROs in those amounts.

Name: Judge Nicol **Date:** 15th September 2023

Appendix of relevant legislation

Criminal Law Act 1977

Section 6 Violence for securing entry

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

(1A) Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

(3) ...

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(6) ...

(7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.

Protection from Eviction Act 1977

Section 1 Unlawful eviction and harassment of occupier

1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in

occupation or restricting the right of any other person to recover possession of the premises.

2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was

purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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.