FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2023/0103**
Property	**:**	**1A Haverfield Road, London E3 5BH**
Applicants	**:**	**Zachary David Eckheart** **Steffen Michels** **Vasilica Zaharia** **Monu John**
Respondent	**:**	**Andrew Graeme Ballance**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and Venue of Hearing	**:**	**22nd September 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**25th September 2023**

DECISION

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1) **The Respondent shall pay Rent Repayment Orders as follows:**
   a. **To the First Applicant in the amount of £7,200**
   b. **To the Second Applicant in the amount of £7,700**
   c. **To the Third Applicant in the amount of £7,800**
   d. **To the Fourth Applicant in the amount of £4,800**

2) **The Respondent shall also reimburse the Applicants' Tribunal fees of £600.**

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

Reasons

1. The Applicants lived at the subject property at 1A Haverfield Road, London E3 5BH, a 7-bedroom detached house:

   a) First Applicant from 28th April 2018 to 21st April 2022 at a rent of £600 per month

   b) Second Applicant from 4th March 2019 to 15th May 2022 at a rent of £650 per month

   c) Third Applicant from 29th January 2021 to 6th June 2022 at a rent of £650 per month

   d) Fourth Applicant from 18th June 2021 to 8th June 2022 at a rent of £400 per month.

2. The Respondent is the freeholder of the property. He lived in one of the rooms at the property. He granted each of the Applicants what he termed a "Lodger's Licence Agreement" on the basis that he lived there and it was thereby excluded from statutory security of tenure.

3. The Applicants seek rent repayment orders ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. The Tribunal issued directions on 23rd June 2023. The Respondent failed to provide his bundle of documents on time and so, on 25th August 2023, the Tribunal ordered that, unless he did so by 1st September 2023, he would be barred from further participation in the proceedings. He has not done so and, therefore, he has been barred from that date.

5. The hearing of this matter was in person and took place on 22nd September 2023. The Applicants attended but the Respondent did not. The Tribunal was satisfied that the Respondent had sufficient notice of the hearing and proceeded in his absence.

6. The documents before the Tribunal consisted of a bundle of 144 pages and a one-page skeleton argument from the Applicants. Each of the Applicants gave evidence in support of their witness statements included in the bundle.

The offence

7. 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").

8. The London Borough of Tower Hamlets has an additional licensing scheme which started on 1st April 2019. The property would have required a licence under that scheme if the four Applicants had been the only occupants. However, throughout the Applicants' time at the property, there were never less than 5 occupants and sometimes as many as 8, all in separate households. Therefore, it was subject to the mandatory statutory licensing scheme.

9. There was a "house rule", possibly incorporated into some of the Lodger Licence Agreements, that residents were to vacate the property between the hours of 9am and 5pm, ostensibly to allow the Respondent to see clients for his intended career as a therapist (although no clients ever came to the property). This rule was only relaxed during the COVID pandemic when residents could not go into their work offices. In any event, the residents, including the Applicants, all used the property as their only or main residence and the rule was extremely inconvenient at times.

10. Tower Hamlets confirmed that the Respondent had not applied for an HMO licence at any time, including after the Applicants left when he continued to let rooms at the property.

11. 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 for at least the entire period that the Applicants resided there.

Rent Repayment Order

12. 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.

13. 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.

> 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. …

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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).

21. The Applicants seek a RRO for each of them for the full amount of rent they each paid for the last 12 months of their respective stays at the property:

(a) First Applicant £7,200
(b) Second Applicant £7,700
(c) Third Applicant £7,800
(d) Fourth Applicant £4,800

22. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is common for a landlord to include the utility charges within the rent – gas, electricity and internet access were included in the Applicants' 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 did 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.

23. 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 when enacting the legislation.

24. In this case, the Applicants had no idea as to the cost of any of the utilities included in the rent. With all due respect to Judge Cooke, it is literally impossible for the Tribunal to make any calculation of its own based on an almost complete lack of relevant information. In the circumstances, the Tribunal declines to make any deduction in relation to utilities.

25. 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 raised by the Applicants. The Tribunal found the Applicants' evidence credible and consistent and therefore makes the following findings:

(a) The current RRO application is the culmination of a process which started with the First Applicant complaining to Tower Hamlets in February 2022. He was prompted to do so because there were no fire alarms or smoke detectors at the property and, when he raised this with the Respondent, he did not attempt to fix the problem. Indeed, the First Applicant got the impression that the Respondent thought that the property was not subject to the same health and safety requirements as tenanted properties because the occupants were only "lodgers" – this is not correct as licensees are covered in the same way as tenants. The Respondent only installed fire alarms when prompted by Tower Hamlets and, even then, they appear to have been individual smoke detectors bought from a local DIY store, not networked nor wired to the mains, which would not be adequate.
(b) Apart from the installation of inadequate fire alarms, the Respondent took little or no action after being notified by Tower Hamlets of the licensing requirements. Instead of applying for a licence, the Respondent promised Tower Hamlets he would evict all the "lodgers" and stop letting out the rooms. In all likelihood, he knew that he was not going to do this when he said it. In the event, he did evict the Applicants and the other residents who were there at the same time but promptly resumed letting out the rooms to other people.
(c) The Respondent provided no gas or electricity safety certificates. There was no electricity inspection until after Tower Hamlets became involved which was a concern for the Applicants – light bulbs would burn out within hours of installation, amongst other issues.
(d) The Respondent was reluctant to employ professionals and attempted most of the maintenance himself. As a result, issues often took a long time to be addressed. For example, the Respondent failed to address a problem with a leaking shower tray. As a result, the entire floor had to come up and the shower cubicle replaced. He started the work but then didn't complete it for 18 months, leaving up to 7 people to share one working shower (the Third Applicant had an en suite shower room although that too was in poor condition).
(e) The garden gate and fence were damaged so that parties could see inside.
(f) The Respondent insisted that bikes could not be kept in the house. The Fourth Applicant had no choice but to lock his bike up outside.

However, the street had heavy foot traffic, being located near a park entrance, and eventually the bike was stolen.

(g) The Respondent had a habit of playing computer games in his room throughout the day and night. When he did so, he would often shout loudly, including using swear words. This would disturb the other residents, particularly during the small hours – the Second Applicant complained of being woken up at 5am. The First Applicant confronted the Respondent about this issue but this only resulted in a temporary improvement.

(h) There was a room containing facilities for the residents to do their laundry and a freezer. However, it was accessible only through the Respondent's room. The residents therefore had no access other than at times approved by the Respondent, which did not include the weekends.

(i) From before the start of the First Applicant's tenancy, there was a pile of dirt and rubble taking up around one-third of the rear garden. The Respondent talked of plans to make use of it to build a path around the house but never did so, only removing it when he decided to sell the property (a plan also not executed). In the meantime, a fox took up residence and it became known as the "fox den".

(j) The garden generally was unusable although it was technically one of the facilities which the residents had the right to use. Apart from the fox den, the Respondent used it to store old white goods and maintenance waste or materials.

(k) All the bathrooms suffered from mould due to a lack of ventilation.

(l) One of the windows in the Second Applicant's room could barely be opened. He mostly used a roof window to get essential ventilation into his room but that came down one time when he was trying to use it. He reported to the Respondent that rain was coming in. The Respondent insisted on a temporary repair which left the window permanently shut. The room sometimes became unbearably hot without any source of ventilation. Despite the Second Applicant's complaints, it took the Respondent 8 months to fix the window. When the Second Applicant asked for a rent reduction to reflect the state of his room, the Respondent refused to give more than £100 off.

(m) In a conversation which the First Applicant clandestinely recorded, the Respondent conceded that the floors, doors and windows would need to be replaced if the property were to be sold.

(n) When the Respondent took on new lodgers he rarely, if ever, notified the other residents. The First Applicant described coming into the kitchen and being completely surprised to find a stranger there. This was a serious problem due to the lack of storage space at the property, particularly in the kitchen. With each new resident, the other residents had to clear spaces for them to use.

(o) The Respondent felt free to enter any of the Applicants' rooms at any time. The Second Applicant's room had access to a small attic space used by the Respondent for storage. On more than one occasion, the Second Applicant returned from work trips abroad to find that the Respondent had accessed this space without his knowledge while he was away.

26. The Applicants' evidence gave the clear impression that the Respondent is an accidental landlord with no understanding of his own limits and a careless attitude to his obligations. He has a house too large for his sole use and so he rents out the rest of his rooms. The evidence shows that he did not know what he was doing but just didn't care. His lack of knowledge is no excuse for his behaviour as a bumbling amateur can be just as dangerous as a professional who only cares about making money. He appears to see no need or reason to comply with the licensing regime or any obligation which bears on the condition of the homes of his "lodgers".

27. It is important to understand why a failure to licence is so serious. 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 rarely, if ever, be able to assure itself that a property meets the relevant licensing standards.

28. In this case, the Tribunal has no idea of how bad the property is. Gas, electrical and fire safety have clearly not been up to standard in the past and it is not clear that there has been much of an improvement. For example, the Respondent's inability to institute proper fire safety management in relation to the alarms means that it is not possible to trust he has met his obligations in relation to other fire safety measures such as the use of fire doors.

29. The Applicants' evidence suggests that the property is over-used and it is not clear that Tower Hamlets, if it granted an HMO licence, would permit the Respondent to have the same number of residents as he had while the Applicants were there.

30. The fact that the Respondent has failed to provide any evidence, along with the Applicants' evidence of his poor conduct as a landlord, is consistent with the possibility that he has no positive evidence to show the Tribunal.

31. If a landlord does not apply for a licence, the audit of the management arrangements never happens. As a result, the Respondent could be saving 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.

32. 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.

33. The Tribunal had no evidence of the Respondent's financial circumstances and so had nothing to take into account in this respect.

34. Taking into account all the circumstances, the Tribunal concluded that this was a serious and deliberate default which warranted a proportionate sanction in the light of the purposes of the licensing regime. Therefore, the Tribunal concluded that the amount of each RRO should be the full amount sought.

35. The Applicants paid £600 in Tribunal fees. The Tribunal has the power to order the Respondents to reimburse them. The application has succeeded while the Respondent has failed to comply with the Tribunal's directions so comprehensively as to be barred from participation. In the circumstances, the Tribunal concluded that the Respondent should reimburse the Applicants the whole amount.

Name: Judge Nicol **Date:** 25th September 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).

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.