



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

Case Reference : **LON/00BA/HMF/2023/0052**

Property : **45 Wimbledon Hill Road,
London SW19 7NA**

Applicant : **Alexander Forbes (Room 214)
Julian Vince (Room 216)
Driss Fouhami (Room 210)**

Representative : **Alexander Forbes**

Respondent : **Amity College Ltd**

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

Tribunal : **Judge Nicol
Mr O Dowty MRICS**

**Date and Venue of
Hearing** : **28th September 2023;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29th September 2023**

DECISION

- 1) The Respondent is barred from further participation in these proceedings.**
- 2) The Respondent shall pay Rent Repayment Orders as follows:**
 - a. To the First Applicant in the amount of £8,450;**
 - b. To the Second Applicant in the amount of £8,450;**
 - c. To the Third Applicant in the amount of £850.**
- 3) The Respondent shall further reimburse the Applicants their Tribunal fees totalling £300.**

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

Reasons

1. The address of the subject property is 45 Wimbledon Hill Road, London SW19 7NA but it stretches at the upper floors across numbers 41, 43 and 47 in the same 4-storey Victorian block known as Bank Buildings. It consists of residential accommodation on the upper 3 floors, with some dormitories, some single rooms and shared bathroom and kitchen facilities, with commercial premises on the ground floor. The Applicants lived there:
 - (a) The First Applicant occupied room 214 from January 2022, paying £650 every 28 days. He had been staying at the property in other rooms since December 2020.
 - (b) The Second Applicant occupied room 216 from 27th September 2019, also paying £650 every 28 days.
 - (c) The Third Applicant paid £850 to occupy room 210 with his son, Mohamed, from 20th November 2022. However, they were evicted, along with the other 2 Applicants and all other occupants of the property, on 1st December 2022.
2. The Applicants seek rent repayment orders (“RRO”) against the Respondent in accordance with the Housing and Planning Act 2016 (“the 2016 Act”).
3. There was a face-to-face hearing of the application at the Tribunal on 28th September 2023, attended by 2 of the Applicants, Mr Forbes and Mr Vince, and their witness, Cllr Susie Hicks.
4. The Respondent did not attend and was not represented. The Tribunal was satisfied that the Respondent had received sufficient notice of the hearing and decided to proceed in their absence.
5. The documents available to the Tribunal consisted of a bundle of 163 pages in electronic form prepared by the Applicants. It included witness statements from each of the 3 attendees.

Debarring the Respondent

6. The Tribunal issued directions on 27th June 2023. The Applicants complied by filing and serving their bundle of documents. The Respondent was supposed to do likewise by 22nd August 2023.
7. Under rules 8(2)(e) and 9(3) and (7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may bar the Respondent from participation in all or part of the proceedings for his failure to comply.
8. The Tribunal notified the parties that the issue of whether the Respondent should be barred would be considered at this hearing. The Respondent has made no representations in respect of it. Therefore, the

Tribunal had no evidence or submissions explaining the Respondent's default. Further therefore, the Tribunal decided to bar the Respondent.

The offence

9. 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 Applicant alleged that the Respondents were guilty of the following offences:
 - (a) Having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004; and
 - (b) Unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977.

Nature of occupancy

10. None of the Applicants were given any form of occupancy agreement. However, their occupancy had all the hallmarks of a tenancy:
 - a) Each Applicant had exclusive possession of their room. Although the Respondent called the accommodation a "hostel", no services were provided other than infrequent cleaning of the communal areas.
 - b) Each Applicant paid a fixed sum at a regular interval of 28 days, as proved by the receipts provided by the Respondent for each payment. The Tribunal is satisfied that each payment was rent for a periodic tenancy.

Having control of or managing an unlicensed HMO

11. Under section 72(1) of the Housing Act 2004, a person commits an offence if they are a person having control of or managing an HMO which is required to be licensed but is not so licensed.
12. An HMO is defined in section 254 of the same 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 an unusually large number of units of living accommodation, none of which were self-contained.
 - (b) *The living accommodation is occupied by persons who do not form a single household.* The occupants clearly did not form a single household. They were a mixture of long-term residents, some placed there by the local authority's homelessness department, and short-term residents referred by booking.com.
 - (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.* The Tribunal is satisfied that the occupants were using the

property as their only or main residence. This was demonstrated by the last 11 or so residents who were evicted on 1st December 2022 as described further below – they were particularly distressed by their eviction because they had no alternative accommodation and had to look for some at short notice.

(d) *Their occupation of the living accommodation constitutes the only use of that accommodation.* The Tribunal is satisfied that the property was only used as living accommodation. There was a common reception area and a connecting corridor at first floor level through to the Respondent’s classrooms in number 47A but the residential accommodation only ever spread into the classrooms (on a couple of occasions when booking.com had overbooked), not the other way around.

(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.* As referred to above, the Applicants paid rent. The evidence suggests that all residents paid for their 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.* All the residents shared kitchens and bathrooms, of which there was one of each on each floor.

13. It is clear that the Respondent controlled and managed the property as all rent payment receipts and emails came in their name. They employed a handful of staff, at least one of whom was present on site 24/7. The Applicants knew them as “Charles”, “Tony” and “Francois”. They took rent payments in cash, issued receipts, chased residents for missed rent payments and evicted non-payers. They also evicted the residents on 1st December 2022 as described further below.

14. The First Applicant also met the principal director of the Respondent, Mr Sylvester Michaels, when he attended to a water leak at the property which was affecting shop premises below.

15. The Applicants investigated the licensing situation with the local authority, the London Borough of Merton. Merton provided a copy of the HMO Register which did not contain any mention of the subject property.

16. That the property was unlicensed was also apparent from its condition which included the following matters showing that management was hopelessly inadequate:

(a) Following a number of inspections, on 17th January 2022 the London Fire Brigade issued a Restriction Notice for breaches of Articles 13 and 14 of the Regulatory Reform (Fire Safety) Order 2015 due to a lack of a warning system or escape routes.

- (b) The evidence of the Applicants, including a large number of photos of the interior of the property, and of Cllr Hicks showed that the property was in a poor state of repair.
 - (c) Roof leaks had resulted in extensive damp patches in the living accommodation. Large sections of wallpaper dangled from the walls.
 - (d) One of the bathrooms had various items of debris on the floor, as well as discarded vodka bottles.
 - (e) Mr Vince's room had a space where the window should be, which he tried to fix himself with a makeshift cardboard and plastic covering.
 - (f) On at least one occasion, a pane of glass fell out of a window onto the street below.
17. Therefore, the Tribunal is satisfied so that it is sure that the property constituted a HMO throughout the Applicants' occupation and that, therefore, the Respondent should have sought a licence. The property was not so licensed and there is no suggestion that the Respondent ever applied for one. Therefore, the Respondent committed the offence.

Unlawful eviction and harassment

18. On 25th November 2022 the Respondent sent an email to all occupants stating,
- The hostel will not be able to extend the stay of guests from the 30th of November 2022 until further notice. This means all guests will have to find an alternative place to stay and vacate the hostel on the 1st of December 2022.
19. On 1st December 2022 Tony and the rest of the Respondent's employees did their best to get the remaining 11 or so residents (including the Third Applicant's son) out of the property as quickly as possible. They created a busy atmosphere in which they sought to hustle and cajole residents out – the First Applicant described it as “chaotic” and admitted that he felt panicked. He called Cllr Hicks and got her into the building to observe what was happening.
20. The Respondent's employees' actions on that day included the following:
- (a) At one point, one of the Respondent's employees said he would cut off the electricity supply to the building.
 - (b) One resident, Esther, was sitting in her dormitory while the Respondent's employees set to dismantling all the beds and other furniture around her. At one point, Esther screamed; when the First Applicant arrived, he found that the Respondent's employees had knocked over a heater which was beginning to burn through the carpet until he disposed of it in the bathroom.
 - (c) The First Applicant observed one of the Respondent's employees talking with another resident, Aranella, at the door of her room to get her to leave.

- (d) The Respondent's employees kept locking the main front entrance so that residents had to be asked to be allowed back in to move out their belongings. This was the method the Applicants had seen the Respondent use before to evict residents.
21. Under section 1 of the Protection from Eviction Act 1977, it is an offence if:
- (a) 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, unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
 - (b) Any person, with intent to cause the residential occupier of any premises to give up the occupation of the premises or any part thereof does acts likely to interfere with the peace or comfort of the residential occupier.
 - (c) The landlord of a residential occupier or an agent of the landlord does acts likely to interfere with the peace or comfort of the residential occupier or members of his household and 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.
22. By reason of the matters set out above, the Tribunal is satisfied beyond a reasonable doubt that the Respondents committed all 3 offences. A landlord cannot be vicariously liable under sub-section (3A) as referred to in sub-paragraph (c) above (*R v Quereshi* [2011] EWCA Crim 1584; [2011] HLR 34) but the Tribunal has no doubt that their employees' acts set out above were carried out at the Respondent's behest.

Rent Repayment Order

23. 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. The Tribunal has a discretion not to exercise that power. However, 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.
24. The RRO provisions have been considered by the Upper Tribunal (Lands Chamber) in a number of cases and it is necessary to look at the guidance they gave there. 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:
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. ...

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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).
32. The Applicants seek a RRO for each of them for the full amount of rent they each paid for during 12 months of their respective stays at the property. The first two Applicants, because rent was due every 28 days, made 13 payments in the relevant period. The Third Applicant only ever made the one payment. Therefore, the maximum amount the Tribunal may award is:
 - (a) First Applicant £8,450
 - (b) Second Applicant £8,450
 - (c) Third Applicant £850
 33. Despite the Respondent having committed multiple offences, the Tribunal has no power to make separate awards for each or to award an amount higher than the maximum amount. Although the RRO is a penal sum, any penalty is capped by the amount of the rent actually paid.
 34. 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. 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.
 35. 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.

36. In this case, there was no evidence as to the cost of any of the utilities. 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.
37. 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 set out above. The Respondent’s behaviour has been appalling, having committed multiple offences, forcing the Applicants to take legal action to obtain their remedies and then failing to engage with the proceedings.
38. 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.
39. As referred to above, the Respondent’s conduct has been reprehensible. The most kind description would be negligent but, more accurately, it would seem that they only cared about getting money in. They had no interest in being a responsible, considerate or even law-abiding landlord. The Applicants, on the other hand, appear to have been nothing but forbearing, paying their rent and only objecting to their treatment when they finally had no choice because they had been evicted.
40. The Respondent presented no evidence about their financial circumstances and so the Tribunal has no basis even to consider an adjustment to the RRO in relation to such matters.
41. Therefore, the Tribunal has decided to award each Applicant a RRO in the maximum amount set out above.

Costs

42. The Applicants are also entitled to reimbursement of their Tribunal fees of £300 under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the fact that the application has been successful, and in the light of all the circumstances of this case, the Tribunal has concluded that it is appropriate to order reimbursement.

Name: Judge Nicol

Date: 29th September 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 1 **Unlawful eviction and harassment of occupier**

- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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 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.
- (j) 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.
- (k) 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.
- (l) 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).

254 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.

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
 - (a) receives (whether directly or through an agent or trustee) rents or other payments from—
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
 - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
 - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

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

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

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

Section 41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if–
- (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.

- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

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

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

If the order is made on the ground that the landlord has committed ***the amount must relate to rent paid by the tenant in respect of***

an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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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
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- (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.