FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BJ/HMF/2021/0085**
Property	**:**	**The Pyekle, Holdernesse Road, London SW17 7RG**
Applicants	**:**	**Nikola Kolev** **Liam Niven** **Holly Marshall**
Representative	**:**	**Justice For Tenants**
Respondent	**:**	**Amlendu Kumar**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr S Wheeler MCIEH CEnvH**
Date and Venue of Hearing	**:**	**5th October 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**6th October 2023**

DECISION

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1) **The Respondent's application for the hearing to be held in private is refused.**

2) **The Respondent shall pay Rent Repayment Orders in the following amounts:**
   a. **£2,490.98 to the First Applicant, Nikola Kolev;**
   b. **£2,586.67 to the Second Applicant, Liam Niven; and**
   c. **£2,471.60 to the Third Applicant, Holly Marshall.**

3) **The Respondents shall reimburse the Applicants their Tribunal fees of £300.**

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

Reasons

1. The Applicants lived at the subject property at The Pyekle, Holdernesse Road, London SW17 7RG, a 2-storey, 3-bedroom semi-detached house with shared kitchen and bathroom/WC facilities, as follows:

   - Room 1: Nikola Kolev from 19th September 2019 to 19th September 2020 (although his name on the tenancy agreement was "Nikola Lyuobmirov")
   - Room 2: Liam Niven from 14th May 2019 to 10th August 2020
   - Room 3: Holly Marshall from August 2019 to May 2020

2. Two other residents also lived at the property:

   - Room 4: Harry Galliano from September 2019 to April 2020
   - Room 5: Andrea Cuttini from September 2019 to May 2020

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

4. The hearing of this matter was in person and took place on 5th October 2023. It was attended by:

   - The First Applicant (the other two did not attend)
   - Mr Cameron Nielsen from Justice for Tenants, representing the Applicants
   - The Respondent and his son, Mr Akshay Kumar

5. The documents before the Tribunal consisted of:

   - The Applicants' bundle of 241 pages;
   - The Respondent's bundle of 98 pages;
   - An addendum bundle of 83 pages, also from the Respondent;
   - The Applicants' Response to Respondent's Submissions, 16 pages; and
   - A bundle of authorities from Mr Nielsen.

Private hearing

6. By email dated 27th September 2023 Justice for Tenants purported to request that Mr Jamie McGowan of the Hammersmith & Fulham Law Centre be allowed to attend the hearing as an observer. This request was entirely unnecessary because the default position for any Tribunal hearing, as it is for the majority of court or tribunal hearings in this country, is that it is held in public.

7. Nevertheless, the request prompted the Respondent later the same day to ask that the hearing be in private for the following reasons:

- Sensitive Nature of the Case: The case I am involved in deals with extremely sensitive and personal matters, including criminal allegations. The presence of observers or members of the public could exacerbate the emotional stress and discomfort associated with such sensitive issues.
- Protection of Privacy: Ensuring a private hearing will help protect the privacy of all parties involved, including myself, witnesses, and others who may be affected by the proceedings. Privacy is essential to prevent the inadvertent disclosure of personal information and to maintain the dignity of those involved.
- Preventing Intimidation, Biases or Harassment: I am concerned that the presence of observers or members of the public may lead to my and witnesses' intrusion of privacy, intimidation, or biases or harassment or of parties, or "even the judge", which could adversely affect the fairness of the proceedings and the administration of justice.
- Encouraging Open Communication: A private hearing will encourage open and honest communication between the parties involved, potentially leading to a faster resolution and avoiding unnecessary conflicts.

8. The principles of open justice were most recently considered by the Supreme Court in *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38; [2020] AC 629 in which Baroness Hale made the following statements on behalf of the court:

> **1** As Lord Hewart CJ famously declared, in *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256, 259, "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done". That was in the context of an appearance of bias, but the principle is of broader application. With only a few exceptions, our courts sit in public, not only that justice be done but that justice may be seen to be done.
>
> **2** … As Toulson LJ said, in *R (Guardian News and Media Ltd) v City of Westminster Magistrates Court (Article 19 intervening)* [2013] QB 618 …, at para 1:
>
> > "Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes – who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."
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> **41** The constitutional principle of open justice applies to all courts and tribunals exercising the judicial power of the state. It follows that, unless inconsistent with statute or the rules of

court, all courts and tribunals have an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal in question.

42 The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly.

43 But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. …

9. The Respondent's grounds for a private hearing are either so general as to apply to all cases or lack any evidential foundation, e.g. there is no suggestion that, realistically, anyone involved in this case is or could be subject to intimidation or harassment. Weighing against the Respondent's concerns are the fundamental requirements of open justice. In the circumstances, the Tribunal could see no basis for the hearing to be made private.

The offence

10. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the 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").

11. It was not in dispute that the property was occupied by 5 unconnected tenants so that the property was subject to the mandatory statutory HMO licensing scheme under the 2004 Act.

12. The Respondent put forward one defence, namely that a RRO may only be granted against a tenant's immediate landlord (in accordance with the Supreme Court's judgment in *Rakusen v Jepson* [2023] UKSC 9) and that a company called Like Minded Living ("LML") was the Applicants' immediate landlord, not him.

13. On 4th April 2018 the Respondent, who is the freehold owner of the property, granted a tenancy to LML for a fixed term expiring on 30th September 2019. LML then granted the following tenancies (albeit describing themselves in each agreement as "Agent"):

- To the First Applicant for the period from 20th September 2019 to 19th September 2020;
- To the Second Applicant for the period from 13th September 2019 to 12th February 2020; and

- To the Third Applicant for the period from 10th August 2019 to 9th February 2020.

14. What is notable about each of these tenancies is that they were granted before the expiry of the term of LML's tenancy but expired long after that term had ended. It seems that neither the Respondent nor LML saw any significance in this as they both carried on as if nothing had changed. LML managed the property on a day-to-day basis, reverting only to the Respondent for significant items of repair or maintenance. As far as the Respondent was concerned, he had handed over all legal and management responsibility to LML. LML collected the rents from the Applicants and paid sums to the Respondent in purported discharge of the rent agreed in their tenancy. (In fact, the Respondent complained that he only received about half of the £2,600 per month due from LML.)

15. It was the Applicants' case that granting the tenancies in this way did have consequences, albeit unintended. Mr Nielsen pointed out that LML's tenancy contained a clause excluding it from Part II of the Landlord and Tenant Act 1954 which means that it did not continue after the end of the fixed term, meaning that the Respondent was wrong to regard his arrangement with LML as continuing unbroken.

16. The Respondent pointed to the clause in LML's tenancy relating to the term:

> THE TENANCY PERIOD from and including the 31st day of March 2018 to and including 30th day of September 2019.
>
> "Term", "Tenancy" or "Tenancy Period" includes the whole of the period during which the Tenant remains in occupation of the Property.

17. The Respondent argued that the second part of the above quoted section of the tenancy meant that the tenancy continued so long as LML was in occupation of the property. However,

(a) This offends against the requirement that a tenancy should have a term certain. The Respondent's interpretation would mean that no-one would know when the tenancy would be due to end.
(b) LML was never in occupation. They took the tenancy in order to sub-let to others who would actually occupy the property.

18. The effect of LML granting a term beyond the expiry of its own term was considered in *Milmo v Carreras* [1946] 1 All ER 288 in which Lord Greene MR stated,

> For the purposes of this case, I think it is sufficient to say that, in accordance with a very ancient and established rule, where a lessee, by a document in the form of a sub-lease, divests himself of everything that he has got (which he must necessarily do if he is transferring to his so-called sub-lessee an estate as great as, or purporting to be greater than, his own) he from that moment is a

> stranger to the land, in the sense that the relationship of landlord and tenant, in respect of tenure, cannot any longer exist between him and the so-called sub-lessee.

19. LML effectively assigned the remainder of their interest in each of those parts of the property when they granted the tenancies to each of the Applicants. It is not what LML or the Respondent intended but, from the moment of the grant of each tenancy, the Respondent became each Applicant's landlord. By operation of section 3 of the Landlord and Tenant (Covenants) Act 1995, the benefit and burden of all the covenants in LML's tenancy passed to the Applicants.

20. The Respondent protested that he neither managed nor controlled the property, having handed over such matters to LML. This argument engaged an element of the offence under section 72(1), namely that it is an offence to have control of or manage an HMO which is required to be licensed but is not so licensed. Section 263 of the Housing Act 2004 defines these terms, the following parts of which would appear to apply to the Respondent:

- "person having control" means the person who receives the rack-rent of the premises (i.e. a rent which is not less than two-thirds of the full net annual value of the premises) or who would so receive it if the premises were let at a rack-rent.
- "person managing" means the person who, being an owner of the premises receives (whether directly or through an agent or trustee) rents or other payments from tenants of parts of the premises or would so receive those rents or other payments but for having entered into an arrangement 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.

21. The Respondent pointed out that LML received the Applicants' rents, not him, but LML were liable to pay him their own rent which itself satisfied the definition of a rack rent and he would have received the Applicants' rents but for the arrangement he had with LML. The Tribunal is satisfied that the Respondent had control of and managed the property for the purposes of section 72(1) even though LML equally satisfied the statutory definitions.

22. The Respondent pointed out that at least one clause in the Applicants' tenancies, 14.2, assumed the existence of a Superior Landlord. However, redundancies or contingent clauses are frequently present in tenancy agreements based on templates and such references do not by themselves imply the existence of everything they refer to.

23. The Respondent queried why he should be liable for something that was essentially LML's fault. For much of the relevant period, he was out of the country and unable to return due to COVID restrictions. Further, he relied on LML's professionalism after they had been recommended to him by previous agents, Chesterton, who he also trusted. While these

are matters relevant to mitigation, as considered further below, they do not obviate the findings that the Respondent was the Applicants' landlord and satisfied the statutory definitions of a person having control of and managing the property.

24. The Tribunal raised with the Respondent whether he wished to seek to rely on the defence under section 72(5) of having a reasonable excuse. In response, the Respondent eschewed any claim that he was ignorant of his obligations as a landlord for licensing or housing standards. He has at least two other properties in the same borough, Wandsworth, and is familiar with compliance with standards set by the local authority.

25. 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 and, as the Applicants' landlord, is subject to the potential award of a RRO.

Rent Repayment Order

26. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the 2016 Act 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.

27. 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. …

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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).

35. The Applicants each seek a RRO of the maximum amount, being the rent they each paid for the period between 20th September 2019 and 1st April 2020:

(a) Nikola Kolev £4,151.64.
(b) Liam Niven £4,311.11
(c) Holly Marshall £4,119.34

36. 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, in this case utilities were not included in the rent and so there can be no deduction in that respect.

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 referred to in this decision.

38. 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.

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

(a) Consultants – surveyor, architect, building control, planning
(b) Licensing fees
(c) Fire risk assessment
(d) Smoke or heat alarm installation
(e) Works for repair or modification
(f) Increased insurance premiums

(g) Increased lending costs

(h) Increased lettings and management costs.

40. 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.

41. The Tribunal is required to consider whether any deductions should be made in accordance with section 44(4) of the 2016 Act. The Applicants complained about the Respondent's conduct in the following respects:

(a) The washing machine frequently malfunctioned but, despite repeated reporting, the Respondent took no effective action. The Applicants had to use a local laundrette.
(b) The bathroom shower leaked water into the kitchen below. Adhesive was applied to the bathroom tiles but this was ineffective.
(c) There was severe mould and damp throughout the property. Ms Marshall's asthma was adversely affected.
(d) There was a back door to Mr Kolev's room which would not open, preventing him from ventilating the room.
(e) Gas and electrical safety certificates, an energy performance certificate and the requisite How to Rent leaflet were not provided.
(f) There was no fire door to the kitchen.
(g) LML would visit the property without notice.

42. In contrast, the Applicants say they paid their rent and complied with their obligations under their tenancy.

43. The Respondent included the gas and electrical certificates and the EPC in his bundle. He pointed out that the other failings, including failing to provide the various certificates to the Applicants, were those of LML, not himself. He also asserted that the Applicants were in breach of express obligations under their tenancies to minimise condensation damp and to keep the garden in good order.

44. The Tribunal does understand why the Respondent reposed trust in LML because they had been referred by Chestertons and could be expected to display an appropriate level of professionalism. However, that is not sufficient reason to fail to provide any supervision at all. It would still be prudent to exercise the power that all landlords have and insist that the tenancy with LML have provisions requiring compliance with licensing and other standards and for checking that this is being done. The Respondent pointed out that there was a clause in their tenancy with LML limiting the occupancy of any sub-tenants to 4 people but the fact is that he took no steps to check that this was being complied with, let alone to enforce it.

45. The offence under section 72 is deliberately defined to extend to landlords like the Respondent who wish to devolve most management to another so that they retain a degree of responsibility to ensure management standards do not slip. The Respondent failed to discharge their responsibility and so pointing to LML's default can only mitigate their own fault to a degree. The Tribunal got the impression that the Respondent will learn from this experience and is likely to be effectively deterred from repeating his errors.

46. In contrast, the Applicants were good tenants. It is not their fault that, with one person more than the Respondent intended, sufficient moisture was generated by ordinary household activity to cause condensation damp and attendant mould. Nor is it apparent that the state of the garden was any particular tenant's fault. An HMO requires active management by the landlord which would address these kinds of problems.

47. The Respondent did not provide any information in relation to his financial circumstances.

48. Taking into account all the circumstances, the Tribunal concluded that the Respondent's control and management of the property while it was unlicensed was a serious default which warrants a proportionate sanction but that there is mitigation which justifies a reduction from the maximum amount of 40%.

49. Therefore, the amounts awarded to each Applicant are:

(d) Nikola Kolev £2,490.98 (60% x £4,151.64)
(e) Liam Niven £2,586.67 (60% x £4,311.11)
(f) Holly Marshall £2,471.60 (60% x £4,119.34)

50. The Applicants paid £300 in Tribunal fees. The Tribunal has the power to order the Respondents to reimburse them. The application has been largely successful and, therefore, the Tribunal so orders.

Name: Judge Nicol **Date:** 6th October 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

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

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(a) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(b) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

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

<u>Section 263</u> Meaning of "person having control" and "person managing" etc.

- 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.
- In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
- 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.
- In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

Section 43 Making of rent repayment order

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

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

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

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

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

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

Section 44 Amount of order: tenants

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

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

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

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

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

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

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

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

(b) the financial circumstances of the landlord, and

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