



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

Case Reference : **LON/00AE/HMF/2023/0025**

**HMCTS code
(paper, video,
audio)** : **V – video hearing**

Property : **59a, Chamberlayne Road, London, NW10
3ND**

Applicant : **Adam Shepherd**

Representative : **Mr. C. Neilson of Justice for Tenants**

Respondents : **(1) Vanessa Judith
Hunston Field**
(2) Jonathan Barnett
**(3) RCG Investments
Ltd. t/a Capital Shared Living**
(4) Ross Cheung

Representative : **Not represented**

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

Tribunal : **Tribunal Judge S.J. Walker
Tribunal Member Mr. A. Fonka FCIEH,
CEnvH, M.Sc.**

**Date and Venue of
Hearing** : **10 August 2023 – video hearing**

Date of Decision : **6 October 2023**

DECISION

(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Third Respondent RSG Investments Ltd. t/a Capital Shared Living to pay £3,675.97 to the Applicant.

- (2) Pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal orders that the Third Respondent is to reimburse the fee of £300 paid by the Applicant in bringing this application. Payment is to be made within 28 days.**
- (3) No order is made against the First, Second and Fourth Respondents.**

Reasons

The Application

1. The Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”). They seek an order in respect of the period from 1 June 2021 to 9 February 2022 as set out in their application (see page 55).
2. The application was made on 21 January 2023 and so is in time, and alleges that the Respondents have committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) – having control or management of an unlicensed House in Multiple Occupation (“HMO”).

Procedural Background

3. In the application form the Applicant provided correspondence addresses for each of the Respondents. That for the first two Respondents was taken from the land registry proof of title, those for the Third and Fourth Respondents were obtained from Companies House, being the registered address for RGC Investments Ltd. (“RGC”), and the correspondence address for Mr. Cheung, RGC’s company secretary.
4. On 3 February 2023 the Tribunal sent notice that the application had been received to each of the Respondents at the addresses provided in the application. Directions were issued by the Tribunal on 31 March 2023 and on 3 April 2023 these were also sent to each of the Respondents at the same addresses. The directions required the Respondents to provide bundles of documents on which they wished to rely by 22 May 2023.
5. Meanwhile, on 24 February 2023 the Applicant’s representatives wrote to the Tribunal requesting an order under rule 20 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”) requiring the Respondents to provide further information about their interest(s) in the property. This letter, which is dated 15 December 2022, but which was e-mailed to the Tribunal on 24 February 2023, is at page 24 of the Applicant’s bundle. The Tribunal’s

response was that the application was premature, and no such order was made. Notice of this was sent to all the parties.

6. On 23 May 2023 the Applicant's representatives wrote to the Tribunal stating that no bundles had been received from the Respondents and requesting the making of an unless order. On 31 May 2023 the Applicant's representatives made it clear that none of the Respondents had complied with the directions, and on 1 June 2023 a further request was made for an order from the Tribunal.
7. On the same day Judge Tagliavini made an order requiring the Respondents to provide bundles of documents by 9 June 2023, failing which they would be debarred from taking any further part in the proceedings pursuant to rule 9(3)(a) of the Rules without the need for any further order. Notice of this order was sent to all parties.
8. On 10 June 2023 notice of the hearing was sent to all parties.
9. By 13 June 2023 the Respondents had still not complied with the requirement to provide a hearing bundle and Judge Donegan made an order confirming that they were all debarred from further participation in the proceedings. He further ordered that the Respondents may apply to lift the bar within 28 days of the notice of his order being sent to them. Notice of this order was sent to the parties on 14 June 2023.
10. On 4 July 2023 the Tribunal received an e-mail from the Fourth Respondent. This stated that he had just received the letter dated 1 June 2023, that he had received no previous correspondence, and requested that the case should be dropped on the basis that he had received no notice. This request was repeated in a further e-mail dated 14 July 2023.

The Hearing

11. The hearing was listed for 10.00am. The Applicant attended, as did his representative, Mr. Nielson. None of the Respondents were present when the hearing began. The Tribunal had before it a paginated bundle from the Applicant consisting of 193 pages. Reference to page numbers in what follows are to the printed page numbers which appear on this bundle.
12. At the outset Mr. Neilson made it clear that in view of the limited evidence available in respect of the nature of the relationships (if any) between the parties, the Applicant wished to proceed with his application solely against the Third Respondent, RGC.
13. The Tribunal considered rule 34(a) of the Rules and was satisfied, given the background set out above, that reasonable steps had been taken to notify RGC of the hearing. Correspondence was sent to the company's registered office at the address which appears in the records held by

Companies House (see page 41). It was also satisfied that it was in the interests of justice to proceed.

14. At some time around 10-20am the Tribunal was informed that the Fourth Respondent, Mr. Cheung, was seeking to join the hearing. The hearing was paused, and he joined it. He informed the Tribunal that he had been trying to join the hearing since 10.00am and that he wished to attend in his personal capacity as the Fourth Respondent and also on behalf of RGC. The Tribunal treated his appearance as an application to remove the bar preventing him and RGC from participating in the hearing. In determining that application, it considered what notice had been given to the parties.
15. Mr. Cheung accepted that at all material times he was the company secretary for RGC. This is confirmed by the records from Companies House at page 43. He was asked whether the address in Shelton Street given in that record was his address, and his reply was that it was a forwarding address. He said that because of this he was unable to say whether or not the correspondence from the Tribunal had been received by either him or RGC. He also confirmed that one of the e-mail addresses for RGC was admin@capitalsharedliving.com. Mr. Neilson then provided the Tribunal with a copy of an e-mail sent by the Applicant's representatives to that e-mail address on 1 February 2023 which included a copy of the application.
16. The Tribunal were not satisfied that there was any basis for setting aside the order debaring the Third Respondent from participating in the hearing. It was satisfied that all relevant correspondence had been sent both to the company's registered offices and also to an address which was used by the Fourth Respondent for the purposes of receiving correspondence in his capacity as RGC's company secretary and which address had been provided by him to Companies House. The application by Mr. Cheung was, therefore, refused.
17. The Tribunal therefore proceeded to determine the application summarily, as permitted by rule 9(8) of the Rules. It heard from the Applicant, Mr. Shepherd, who adopted his witness statement and was asked a number of questions, and it heard submissions from Mr. Neilson.

The Legal Background

18. The relevant legal provisions are partly set out in the Appendix to this decision.
19. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. These include an offence under section 72(1) of the 2004 Act. Such an offence is committed if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act

applies must be licensed save in prescribed circumstances which do not apply in this case.

20. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).
21. By virtue of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 an HMO falls within the scope of mandatory licensing if it is occupied by 5 or more persons in two or more households.
22. In either case the building in question must be an HMO. By section 254 of the 2004 Act a building is an HMO if it meets the standard test under section 254(2).
23. A building meets the standard test if it;
 - (a) *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 ...;*
 - (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;*
 - (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 the 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."*
24. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.
25. An offence under section 72(1) can only be committed by a person who has control of or manages an HMO. The meaning of these terms is set out in section 263 of the 2004 Act as follows;
 - (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.
26. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it. It is also a defence under section 72(4)(b) of the Act if an application for a licence has been duly made.
27. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.
28. By virtue of the decision of the Supreme Court in the case of Rakusen - v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.
29. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period and any relevant award of Universal Credit (“UC”) paid in respect of the rent under the tenancy must be deducted.
30. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

Has an Offence Been Committed

31. On the basis of the unchallenged evidence of the Applicant the Tribunal found the following facts.
32. The property is in the London Borough of Brent and comprises the upper two floors of a three-storey brick-built building with a restaurant on the ground floor. There were a total of 6 bedrooms distributed over these two floors. Two of the rooms had en-suite bathrooms, the occupants of the other rooms shared a communal bathroom. There was a single kitchen on the first floor which was shared by all occupants. The property is owned by the First and Second Respondents (page 93).
33. On 31 May 2021 the Applicant entered into what is described as a licence agreement with RGC (pages 59 to 67). This clearly stated that the landlord was RGC trading as Capital Shared Living (page 59) and at the end of the document it states that for the purposes of section 48(1) of the Landlord and tenant Act 1987 the landlord's name is RGC Investments Ltd. (page 67). The terms of the agreement included the payment of rent at a rate of £600 per calendar month. The rent was increased to £650 per month from 1 September 2021 (page 74).
34. The Applicant moved into the property on 1 June 2021. The number of occupants varied over time. When he moved in there were 4 others present, Dashmir was in room 1, Murtadha and Vilma were in room 3, and David was in room 4. This makes a total of 5. The Tribunal specifically asked Mr. Shepherd about an apparent contradiction in his witness statement at para 3(c) (page 182) where he stated that Vilma and Murtheda officially started in occupation on 26 June 2021. His oral evidence, which the Tribunal accepted, was that they were physically present in the period from 1 June to 26 June 2021. This was due to changes in the rooms they were occupying. They were originally in one room but then moved officially to another room on 26 June.
35. During the period in question (1 June 2021 to 9 February 2022) there were always at least 5 people in occupation – as shown by the occupancy timeline set out at paragraph 3 of the Applicant's statement (page 182). At all times the occupants formed at least 2 households. They all shared a single kitchen.
36. The Tribunal was satisfied that all the occupants were occupying the property as their only or main residence and that this was the only use of the property.
37. It follows that throughout the period in question the property was an HMO and one which required a mandatory HMO licence.
38. On the basis of the evidence before it the Tribunal was satisfied that the property did not have a licence throughout the period in question and nor had any application for such a licence been made (see pages 94 to 106).

39. It follows from these findings that any person who falls within the definition of either a person having control of the property or a person managing it – as set out above – was committing an offence throughout that period – subject to their having a statutory defence.
40. The Tribunal first considered whether RGC was a person having control of the premises. Rent was paid to RGC, as shown in the evidence of rent payments at pages 71 to 73. If the rent charged were a rack rent then it was received by RGC and, if not, they would have received it if the rent were a rack rent, as rent was payable to them. It follows that RGC were a person having control of the property within the statutory definition.
41. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not. There was insufficient evidence before the Tribunal to raise such a defence.
42. It follows therefore, that the Tribunal was satisfied that throughout the period claimed RGC were guilty of an offence contrary to section 72(1) of the 2004 Act.

Jurisdiction to Make an Order

43. The Tribunal then went on to consider whether or not, in the light of the case of Rakusen, it had jurisdiction to make an order under section 43 of the Act against RGC. This required considering whether or not RGC was the Applicant's immediate landlord.
44. In determining this question, the Tribunal needed to look no further than the tenancy agreement. This clearly states that the landlord is RGC as explained in paragraph 33 above and as shown at pages 59 and 67. The Tribunal, therefore, had jurisdiction to make an order against the First Respondent for the period in question.

Amount of Order

45. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondent to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

46. The Tribunal was satisfied that the Applicant paid rent in respect of his occupation of the property. A schedule of rent payments made is at page 69 and proof of those payments is at pages 70 to 73. In the period from 1 June 2021 to 9 February 2022 a total of £5,700 was paid in rent.

However, the last rent payment on 24 January 2022 included rent for the whole of the month of February. A monthly rent of £650 is equivalent to a daily rent of $(£650 \times 12) / 365 = £21.37$. It follows that the rent paid in respect of the period from 1 to 9 February 2022 inclusive was $(£21.37 \times 9) = £192.33$, and so £457.67 of the February rent must be discounted. It follows that the total rent paid in respect of the period for which an order is sought was $£5,700 - £457.67 = £5,242.33$.

47. The evidence shows that for the period from 24 January to 23 February 2022 the Applicant received a total of £483 in UC (pages 75 to 77). The Tribunal accepted the Applicant's oral evidence that no earlier payments of UC had been made. At page 69 of the Applicant's bundle it is asserted that the amount of UC to be deducted is £92.70, and a calculation is given at page 90. However, this calculation is not explained and does not appear to be accurate, because it suggests that only 9 days of UC payments are to be taken into account, whereas the payment was for the period from 24 January 2022 onwards, making a total of 17 days. The Tribunal has therefore calculated the amount of UC to be deducted as set out below.
48. The Applicant's overall entitlement to UC before deductions for the assessment period beginning on 24 January 2022 was £924.84, of which £600 was in respect of his housing costs (page 75). It follows that 64.88% of his UC was in respect of his rent. The payment of £483 in UC for a monthly assessment period is equivalent to a daily rate of $(£483 \times 12) / 365 = £15.88$. It follows that the daily amount in respect of housing costs was $£15.88 \times 64.88\% = £10.30$. (This is also the daily rate set out at page 90). This payment covered 17 days of the period for which an order is sought, making a total of $(£10.30 \times 17) = £175.10$. This sum must be deducted from the total amount for which an order may be made, making total rent of $£5,242.33 - £175.10 = £5,067.23$.

Utilities

49. The terms of the Applicant's tenancy were not entirely clear as regards utilities. Clause 7.1 of the agreement (page 60) states that the rent includes central heating, water rates and electricity "*unless the electricity is metered on [sic] which case the licensee must pay for the electricity by means of cards which must be purchased in advance*". It is not clear what this means, as electricity is always metered, but the Tribunal accepted the Applicant's oral evidence that the cost of electricity was included in the rent. No evidence was provided by the Respondents in respect of the costs of those utilities. Following the approach in Acheampong the Tribunal therefore set out to make an informed estimate.
50. In reaching its conclusions the Tribunal bore in mind the following facts which it found based on the evidence before it. The property consists of the upper 2 floors of a brick-built building. A photograph of the front of the property is at page 108. This shows that it benefits from

double glazing. The property was centrally heated by a gas boiler which was situated in a storage room. The Applicant's oral evidence, which the Tribunal accepted, was that each bedroom had a radiator and there was no additional heating. There were also radiators in the bathroom. There was an electric shower and the cooker was also electric. Although the number of occupants fluctuated, there were always at least 5 in occupation, each of whom would be making use of the utilities provided.

51. The Tribunal also bore in mind that the period in respect of which an order is sought covered the months from September to February, during which time heating costs are likely to have been higher because of the time of year.
52. The Tribunal made no deduction in respect of water rates as there was no indication that the water supply was metered and so it was not possible to ascertain what expenditure was dependent on the Applicant's consumption and what was payable in any event.
53. Taking the limited evidence as a whole and doing its best, having regard to its own expertise, the Tribunal made the following informed estimate as to the likely cost of the utilities provided by the RSG for the benefit of the Applicant during the relevant period. It concluded that the likely costs of gas and electricity at the prices current at the time would amount to roughly £100 per month for the whole flat. This would equate to £20 per month per occupant with 5 occupants present. (The Tribunal accepted that two of the occupants shared a room, but considered that any savings would be offset by the additional costs arising from the greater size of that room and the en-suite bathroom provided.)
54. The Tribunal therefore concluded that the amount of £20 per month should be deducted from the total rent paid to take account of utilities. This amounts to a daily rate of $(£20 \times 12) / 365 = £0.66$. The period for which an order is sought is 8 months and 9 days, which makes a total of $£160 + £5.94 = £165.94$. Therefore, the total maximum award which the Tribunal could make is $£5,067.23 - £165.94 = £4,901.29$.

Seriousness of Offence

55. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence. In doing so the Tribunal had regard to the lengthy submissions provided by the Applicant in his statement of case.
56. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. Whilst the Tribunal accepts that a failure to licence is in

no sense a trivial matter, nevertheless, it considered that a reduction is justified to reflect the relative seriousness of this when compared to more serious offences. In the view of the Tribunal this would merit a reduction of 25% from the total maximum award.

57. The Tribunal then went on to consider how serious this offence was in comparison with other section 72 offences.
58. It accepted that there was an aggravating factor in that RGC are clearly a professional landlord, as shown by the evidence from Companies House, which states that their business is renting and operating real estate (page 135).
59. On the other hand, this was certainly nowhere near as serious an offence of this type when compared with others which come before the Tribunal. In his witness statement the Applicant raised the following concerns about the property and the conduct of his landlord. His deposit was not protected, there was no fire blanket and no fire extinguisher, though the Applicant accepted that there were smoke detectors on each floor. There was no fire door to the kitchen, though the bedroom doors closed automatically. The necessary certificates were not provided. Belongings from previous occupiers were left in the property.
60. The Tribunal bore in mind that no property is perfect and issues requiring attention may well arise over time. What is of importance in such cases is how the landlord reacts to those problems. The applicant complained of problems with the electric cooker which used to trip the fuse, but when this was raised with the landlord a maintenance man was sent to deal with it. Similarly, although there were problems with the washing machine, this was replaced within a reasonable period. Again, there was a problem with a rat infestation, but this was addressed and the Applicant's oral evidence was that what was done seemed to have worked.
61. One aspect of the Applicant's case which the Tribunal did not accept was the assertion by the Applicant that the property was overcrowded (para 5(g) of his witness statement at page 185). This is because the mandatory HMO licence which was granted for the property on 25 March 2022 in the name of Mr. Cheung and which was provided with the correspondence he had with the Tribunal referred to above states that the property is reasonably suitable for occupation by not more than 9 persons, which is more than the number of occupants during the period in question.
62. The Tribunal took all these factors into account and concluded that no further adjustment to the amount to be deducted from the maximum rent was justified in either direction, and so the appropriate reduction to take account of the seriousness of the offence was 25%.

Section 44(4)

63. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act. There was no suggestion that there had been any bad conduct by either party, other than the aggravating features already taken into account when assessing the seriousness of the offence, and there was no evidence about the RSG’s financial circumstances. There was no evidence of the commission of any other offences by RSG.
64. In the view of the Tribunal, in the light of this, no further adjustment in the amount to be awarded was required in either direction.
65. The Tribunal therefore decided to make a rent repayment against RSG for the sum of $£4,901.29 \times 75\% = £3,675.97$.
66. The Tribunal was satisfied that, given the Applicant’s success, it was just and equitable to make an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requiring RSG to re-imburse the Applicants with the hearing fee of £300.

Name: Tribunal Judge S.J.
Walker

Date: 6 October 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

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.
- (1) 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.
- (2) 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.
- (3) 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).

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

an offence mentioned in [row 3, 4, 5, 6 or 7 of the table in section 40\(3\)](#) a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord and the tenant,
- (b) the financial circumstances of the landlord, and
- (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Section 52 Interpretation of Chapter

- (1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

- (2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.