



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

**Case Reference** : **LON/00AY/HMG/2023/0005**

**Type of Hearing** : **Remote - Video**

**Property** : **59a, Clive Road, London SE21 8DA.**

**Applicant** : **Mr. Muritala Adebayo Abdul**

**Representative** : **Mr. C. Barrett of Represent Law Ltd.**

**Respondent** : **Ms. Paulina Taiwo Babalogbon aka  
Paulina Taiwo Olorunnibe**

**Representative** : **Not represented**

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

**Tribunal** : **Tribunal Judge S.J. Walker  
Tribunal Member Ms. S. Coughlin MCIEH**

**Date and Venue of  
Hearing** : **31 August 2023 – online**

**Date of Decision** : **25 October 2023**

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**DECISION**

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This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was

referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

- (1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the Applicant the sum of £2,145.**
- (2) The Applicant's application for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is refused.**
- (3) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £300 paid by the Applicant in bringing this application is granted. Payment is to be made within 28 days.**

### 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") for the period from 21 March 2021 to 20 September 2022 as set out in their application.
2. The application is signed by the applicant and dated 2 March 2023 and so is in time. It alleges that the Respondent has committed an offence contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act") - having control or management of an unlicensed House in Multiple Occupation ("HMO").
3. Directions were made in this case on 28 April 2023 and required the parties to provide bundles of documents. The Respondent's bundle was due by 19 June 2023.

#### The Hearing

4. The hearing was conducted remotely by video link. Both parties attended and gave evidence, which the Tribunal took into account. The Applicant was represented by Mr. C. Barrett.
5. The Tribunal had before it the following document bundles, which were all read and taken into account when reaching its decision;
  - (a) the Applicant's paginated bundle comprising 77 pages (bundle A);
  - (b) the Respondent's initial paginated bundle comprising an index and 34 pages (bundle R);
  - (c) the Respondent's additional bundle comprising 25 pages (bundle RA);
  - (d) the Applicant's skeleton argument drafted by Mr. Barrett; and
  - (e) the Respondent's skeleton argument

6. Although the Respondent's bundles were provided well outside the period allowed for in the directions, given the fact that the Respondent is not represented, the Tribunal concluded that they were, nevertheless admissible and should be considered.
7. In what follows references to documents in particular bundles will be, where those bundles are paginated, by reference to the printed page numbers. Where the bundles are not paginated they will be by reference to the electronic page number. References will bear the prefix for each bundle set out above. Thus, for example, page 20 of the Respondent's additional bundle will be page RA20.

### **The Legal Background**

8. The relevant legal provisions are partly set out in the Appendix to this decision.
9. 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. An offence is committed under section 72(1) of the 2004 Act 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.
10. 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).
11. To be an HMO of any description the property must meet the standard test under section 254(2) of the 2004 Act. 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."*

12. Section 260(1)(a) of the 2004 Act provides that the test in section 254(2)(d) above (“the sole use condition”) is presumed to be met unless the contrary is shown.
13. 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.
14. With regard to additional licensing, there was no dispute that the property was in the London Borough of Lambeth and that the whole of that borough was subject to an additional licensing scheme which designated all HMOs occupied by 3 or more persons forming two or more households as requiring a licence (see page A25).
15. An offence under section 72(1) can only be committed by a person who has control of or manages the property in question. 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.*
16. 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.

17. By virtue of the decision of the Court of Appeal in the case of Rakusen - v- Jepsen and others [2021] EWCA Civ 1150 an order may only be made against the immediate landlord of a tenant.
18. 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.
19. 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.
20. 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?**

#### **The Applicant's Case**

21. The Applicant's case is set out in his skeleton argument. It is as follows. The Applicant was an assured shorthold tenant of the property from 21 March until 20 September 2022. The property is a 4-bedroom house which throughout the period was occupied by 3 or more people in three or more households. The property, which is in the London Borough of Lambeth, therefore required an additional licence, which it did not have, and no licence had been applied for. The Respondent is the owner of the property and was also the Applicant's immediate landlord.

#### **The Respondent's Case**

22. The Respondent's case, which appears in her own skeleton argument, is as follows. The property was originally a 3-bedroom house with a shared toilet, bathroom and kitchen. In 2015 a rear extension was built which is a self-contained unit.
23. The Respondent contended that the property was not an HMO because the Applicant was not occupying the property as his only or main residence. She also contended that any occupation of the living accommodation at the property was not the only use of that accommodation but that the Applicant was using the property for business purposes, namely conducting an online trading business. It was not suggested that any of the other occupiers were using the property as anything other than living accommodation.
24. In the course of the hearing the Respondent accepted that in addition to the Applicant there were two other people living in the property during the period in question. She also accepted that if the property were in fact the Applicant's only or main residence and the sole use condition were met, then an additional licence would be required, and that no

licence had been applied for. (See also correspondence from the local authority confirming this at page A31).

### **The Tribunal's Findings and Conclusions**

25. The Tribunal accepted the Respondent's description of the property, in particular, the fact that the extension on the ground floor formed a self-contained unit, and that the rest of the property comprised 3 bedrooms with shared kitchen and bathroom. The ground-floor unit was used for Air BNB guests. The Tribunal was concerned with the 3 bedroom unit.
26. The Tribunal was satisfied that the Applicant entered into an agreement with the Respondent to live at the property for 6 months starting on 21 March 2022. The Tribunal accepted the evidence in his witness statement that he was not given a copy of the tenancy agreement when he signed it. However, the existence of the agreement is shown in text messages passing between the parties. At page 41 the Respondent confirms that she has received £300 in rent in respect of a room for a period commencing on 21 March 2022. At page A42 she states that rent is due on the 21<sup>st</sup> of each month and at page A45 she states that the agreement is for a minimum period of 6 months. Also, the existence of such an agreement is accepted at paragraph 10 of the Respondent's skeleton argument, where she states that the Applicant's rent was £580 per month, that he lived there for a total of 6 months and that she received a total of £3,480 in rent, and in her witness statement (page R28).
27. The Tribunal was satisfied that the property was occupied by two other people apart from the Applicant, who were not part of the same household. This was also accepted by the Respondent at para 12 of her witness statement (page R28) and para 6(b) of her skeleton argument. On the basis of the evidence in the bundles and the admissions made by the Respondent it was satisfied that the property was not licensed and no licence had been applied for.

### Occupation by Applicant

28. As part of her case that the Applicant was not occupying the property as his only or main residence the Respondent relied on the following. On 13 April 2022 the Applicant sent a text message to the Respondent in which he stated that he too was a landlord (page R2). In another message he stated that he owned two properties (page R5). In a further message sent on 6 August 2022 he stated that he had not been back to the property for 2 weeks as he was working on a property project which needed supervision (page R19). Then in a text message on 21 September 2022 the Applicant stated that he was "*away in total 2 months*" (page R1).
29. Also, the Applicant's driving licence, which was issued on 20 February 2021 (before he moved in) states his address as being in London SE13 (page R12) and this is the same address as that given in his application, which was made after he left the property. In her witness statement (para 10 at page R28) the Respondent states that in her discussions

with the Applicant he said that this would not be his main house and that he would not change his documentation or place himself on the electoral role. She also argued that the fact that after a month in occupation the Applicant said that he wished to leave also showed that this was not his main home (para 17 at page R29).

30. The Tribunal considered that the matters referred to by the Respondent raised a number of questions and as a result the Applicant was questioned at length by the Tribunal about his whereabouts both during the period in question and in the period leading up to his moving in.
31. In his replies the Applicant explained that his former partner lived at an address in South Shields. They had lived there together with their children until May 2020 when the relationship with his partner broke down. He moved to London and she remained at the address with his children. The two months he spent away from the property were largely comprised of visits he made to see his children in South Shields. The address on his driving licence was an address owned by his cousin. He had lived there for a time from 2017 onwards but subsequently moved out, but he used the address as a correspondence address. Since coming to London after leaving his former partner he had lived in a number of places for relatively short periods and had, as a result, placed some of his belongings in storage.
32. Whilst the Tribunal found some of the Applicant's account about where he was living in London somewhat evasive and lacking in detail, it accepted his primary contention, which was his oral evidence that whenever he was in London during the period in question he slept at the property, and that he was not away for more than 2 months out of the 6. The Respondent was unable to contradict his account on that point. It did not accept the Respondent's assertion that he had told her that the property would not be his main house or his main accommodation as this is inconsistent with his spending most nights there.
33. In his submissions to the Tribunal Mr. Barrett drew attention to the decision of the Court of Appeal in the case of Sumeghova -v- McMahon reported at [2003] HLR 26, neutral citation [2002] EWCA Civ 1581. In that case the Court of Appeal observed that, in determining what was a person's only or principal home, the question of where the person slept was of the utmost importance.
34. The Tribunal was satisfied that the Applicant mainly slept at the property.
35. The Tribunal also bore in mind that when determining what is a person's only or main home some account must be taken of duration and intention. It would be difficult to conclude that occupation of a property for only a few days, even if the person slept there every day,

would make that property the person's only or main home, especially if they intended to move away shortly afterwards.

36. In this case the Applicant was in occupation for 6 months and the Tribunal accepted that when he moved in, he intended to stay that long, as the Respondent had made it clear that that was the minimum period she would allow. The Tribunal accepted that the evidence showed that after a month he wanted to leave, but that was clearly only because he had fallen out with his landlord, and, in due course he changed his mind and decided to stay. The Tribunal was satisfied that this was a long enough stay to make this the Applicant's only or main residence. Whilst there were some unanswered questions about the Applicant's connections with other properties, and whilst he had not made changes to documents such as his driving licence, the fact remained that during the period he slept most nights at the property.
37. The Tribunal also bore in mind the Applicant's account, substantiated by contemporaneous text messages, that on one occasion his son came to stay with him in order to undergo a medical procedure (see page R10). This suggested that, for the period in question, this was the Applicant's home. If it really were the case that his home were elsewhere, surely his son would have joined him there instead.

#### Use Other than a Dwelling

38. In support of her allegation that the Applicant was using the property for an online trading business the Respondent drew attention to the following. Firstly, in a text message dated 17 April 2022 the Applicant stated that he had lost a significant amount of money trading in the stock market that day (page R8). Then on 21 April 2022 in relation to the payment of his rent the Applicant texted saying that he was waiting for the USA stock market to open (page R9). The Respondent also relied on the Applicant's bank statement which included a number of eToro Trading transactions (page A61).
39. The Applicant's case was that he was a self-employed fitness instructor (see para 1 of his witness statement at page A35). There was insufficient evidence to show the contrary and there was no suggestion that he carried on that business at his home.
40. As explained above, section 260(1)(a) of the 2004 Acts provides that the sole use condition is met unless the contrary is shown. It follows that the Respondent must show on the balance of probabilities that the Applicant was using the property for purposes other than as living accommodation.
41. The Tribunal was not satisfied that she had done so. Whilst there is evidence that the Applicant has various stock investments, and that on one occasion he was waiting for the US stock market to open before being able to pay the rent, it does not follow that he was using the property in order to undertake an investment business. The evidence is just as consistent with the Applicant having placed money in a number



of private investments. The mere fact that a tenant invests money on the stock exchange or with a business such as eToro does not lead to the conclusion that they are running a trading business.

#### Is the Property an HMO?

42. It follows from the findings set out above that during the period in question the property was indeed an HMO. It was occupied by 3 people in 3 households. It therefore needed an additional licence. No such licence was in place nor had one been applied for.

#### Management or Control

43. It was not disputed that the Applicant paid rent to the Respondent – see page A24. If the rent were a rack rent then a rack rent would have been paid to the Respondent.
44. In addition, the Respondent is the owner of the property (see page A17) and she was in receipt of rent.
45. It follows that the Respondent was both in control of the property and managing it.

#### Reasonable Excuse

46. 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. The Respondent was clearly aware of the need for a licence as in her witness statement she stated that she had deliberately not applied for a licence as she had been told that the applicant would not be occupying the property as his main accommodation. From this it follows that at the time she rented the property to the Applicant she was aware of the need for a licence if there were 3 or more occupants. Indeed, her evidence to the Tribunal was that when she placed an advertisement for the property she knew she was going to need a licence.
47. It follows therefore, that the Tribunal was satisfied that throughout the period claimed the Respondent was guilty of an offence contrary to section 72(1) of the 2004 Act.

#### **Jurisdiction to Make an Order**

48. There was no doubt that the Respondent was the Applicant's immediate landlord. It follows that the Tribunal has jurisdiction to make an order against her.

#### **Amount of Order**

49. 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

50. There was no dispute that the amount of rent paid during the period was £3,480.

### Utilities

51. Although there was no written agreement available to the Tribunal it was clear from the correspondence set out in the Respondent's bundle that in general utilities were included. Though at times the Respondent sought to make extra charges for utilities, it appears that the only actual additional charge that was in fact paid by the Applicant was £20.
52. In her additional bundle the Respondent stated that she was unable to produce gas or electricity bills as she had closed her monthly billing account (page RA1). There was no other documentary evidence to establish the actual cost of gas and electricity during the period in question. Following the approach in Acheampong the Tribunal therefore set out to make an informed estimate.
53. In reaching its conclusions the Tribunal bore in mind the following. The property comprises 3 bedrooms upstairs with a toilet and bathroom and there is a large kitchen and a dining area downstairs (see para 4 of the Respondent's statement at page R27). The undisputed oral evidence was that the property had gas central heating and gas hot water and that the cooker was electric. The period in question was in the spring and summer when heating costs will be less, but also was a period when energy prices were very high. There were 3 people in occupation.
54. On the basis of its own knowledge and experience the Tribunal concluded that the cost of gas and electricity for the property was likely to be in the region of £30 per person per month. The Tribunal considered that no deductions were appropriate in respect of water as there was no suggestion that this service 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. Similarly, council tax would be payable in any event and no deduction should be made.
55. The Tribunal therefore reduced the total maximum amount payable by  $£30 \times 6 = £180$ , making the total maximum amount of any order £3,300.

### Seriousness of Offence

56. 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.

57. 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.
58. The Tribunal considered the culpability of the Respondent and concluded that this was relatively high. This was not a case of inadvertence. The Respondent knew a licence was required for a property occupied by 3 tenants but had not applied for one. In addition, the Respondent failed to provide a copy of the tenancy agreement.
59. On the other hand, this offence was at the lowest end of seriousness as regards the impact on the tenant. There was no suggestion that the Applicant was placed in any danger as a result of the failure to licence. In particular, there was no suggestion that there were any failures in respect of fire safety. There was nothing amounting to disrepair other than very minor complaints. There was also no suggestion that the Respondent let any other properties in this country.
60. Taking all these factors together the Tribunal concluded that a reduction of 35% from the total maximum award was appropriate to reflect the seriousness of the offence.

#### Section 44(4)

61. 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.
62. Both parties have raised what, the Tribunal concluded, were largely relatively trivial matters. The Applicant complains of problems with the sink not draining properly and with the washing machine, and that the lighting was inadequate in the kitchen. The main complaint he raises is that the Respondent took a draconian approach to the use of the facilities at the property, often complaining about excessive use of the washing machine and/or the cooker, and seeking to apply additional charges for their use.
63. On the other hand the Respondent complains that the Applicant left the property dirty and was at least partly responsible himself for blockages to the sink. It is clear from the extensive text messages provided in the Respondent's bundle that the relationship between the parties was not good.
64. Taking all this evidence as a whole the Tribunal concluded that the various matters raised by each side largely cancel each other out and that, as a result, there is no need to adjust the amount of the order in either direction to take account of the conduct of either party.
65. There was no evidence before the Tribunal as to the Respondent's financial circumstances and certainly nothing to suggest that she would be unable to pay any amount ordered to be paid. There was no evidence that she had any other convictions.

66. Taking all this together the Tribunal concluded that the amount of the deduction from the maximum amount that could be ordered should therefore remain at 35%, making the total sum to be awarded 65% of the total maximum award. This amounts to an award of £3,300 x 65% = £2,145.

### **Costs**

67. In his skeleton argument Mr. Barrett invited the Tribunal to make an award of costs against the Respondent pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”). Such an award can only be made where the Tribunal is satisfied that the Respondent has acted unreasonably in defending the proceedings. That is a very high hurdle to cross and the Tribunal does not consider that such an award is appropriate in this case.
68. In considering the application the Tribunal bore in mind that the Respondent was not legally represented. Whilst there was little of substance in her case that the sole use test was not met, in the Tribunal’s view her case as regards whether or not the Applicant occupied the property as his only or main residence raised important questions which the Tribunal found it necessary to enquire into. It certainly was not a completely untenable defence as asserted by Mr. Barrett. (Had the Applicant, in response to the Respondent’s case, been rather more forthcoming about where he was living, when, and why, his argument may perhaps have been stronger in this regard).
69. The Tribunal took the application for costs also to include an application for an order under rule 13(2) of the Rules for the reimbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicant had succeeded in his application, it was just and equitable to make such an order.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 25 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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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 —
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - 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—
- the offence relates to housing in the authority's area, and
  - 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—
- section 44 (where the application is made by a tenant);
  - section 45 (where the application is made by a local housing authority);
  - 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.