



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

**Case reference** : **LON/00BH/HMG/2023/0021**

**Property** : **32 Woodberry Way London E4 7DX**

**The Applicants** : **Mr B Murskyy and Mrs N Yurchuk**

**Respondent** : **Ms J Reeves**

**Type of application** : **Application for a Rent Repayment Order  
by tenants**  
Sections 40, 41, 42, 43 and 45 Housing and  
Planning Act 2016.

**Tribunal members** : **Judge Pittaway**  
**Mr S Wheeler MCIEH CEnvH**

**Date of Hearing** : **29 September 2023**

**Date Tribunal  
reconvened** : **3 November 2023**

**Date of decision** : **7 November 2023**

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**DECISION**

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## **Decisions of the tribunal**

- 1. The Tribunal find that the Respondent did not commit an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 but did commit an offence under section 95(1) of the Housing Act 2004 without reasonable excuse.**
- 2. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,457.**
- 3. The reasons for the Tribunal decisions are given below.**

## **The Hearing**

4. Mr Murskyy represented himself and Ms Yurchuk at the hearing. Ms Reeves appeared in person.
5. The Tribunal had before it at the start of the Hearing an Applicants' bundle, stated to be of 98 pages. The Tribunal were missing certain pages from its bundle and arranged for copies of the missing pages to be made available to it during the hearing. The Tribunal had a file containing various video clips and sound recordings provided by the Applicants. The Tribunal had before it three bundles from the Respondent, a 'Background and Summary' of 49 pages, a document of 31 pages which commenced with a Property Licence and a Statement of Reasons of 1 page.
6. Mr Murskyy stated at the start of the hearing that he had not received the Respondent's bundles.
7. The Tribunal gave Mr Murskyy the opportunity of considering Ms Reeves' bundles, and whether he wished to apply for an adjournment of the hearing because he had not received these and because of the late delivery of the Respondent's bundle. Mr Murskyy stated that he had had sufficient time to consider Ms Reeves' bundle.
8. The Tribunal had written two letters, on 22 September and 26 September to the parties, which Mr Murskyy stated he had not received. The Tribunal read these out at the hearing, and sent further copies to the Applicants after the hearing. The substance of the second letter was that the Respondent's bundle had been provided late, without a retrospective application for an extension of time but invited the Applicants to consider whether they wished to proceed with the hearing listed for 29 September, given that the representations made by the Respondent were short. The letter also stated that the Respondent would need the permission of the Tribunal to rely on evidence provided by her on 15 September, and that the Tribunal would have regard to the interests of justice in considering whether to grant her such permission.

9. As the Respondents' bundles did not contain information new to the Applicants the Tribunal allowed the same to be treated as her evidence.
10. The Tribunal heard evidence from Mr Murskyy and Ms Reeves, and had in the bundle before it a witness statement from Ms Yurchuk.
11. Towards the end of the hearing Mr Murskyy informed the Tribunal that Ms Yurchuk was unable to attend by reason of an injury sustained to her foot the previous day. Mr Murskyy had made no application for an adjournment because of Ms Yurchuk being unable to attend and the hearing proceeded in Ms Yurchuk's absence. Accordingly, although Ms Yurchuk had prepared a witness statement, she did not give oral evidence. The Tribunal has read and taken into account Ms Yurchuk's witness statement but has given it limited weight because, due to her absence, her evidence could not be tested through cross-examination.
12. The Tribunal heard submissions from Ms Reeves and Mr Murskyy
13. During the hearing it became clear that Ms Reeves had not seen the file of video and audio clips provided by the Applicants. By directions issued after the hearing the Tribunal directed that these be provided to Ms Reeves and that she be given the opportunity to make representations on them in writing to the Applicants and the Tribunal by 16 October 2023, advising the Tribunal by 9 October if she remained unable to open these. Ms Reeves advised the Tribunal on 9 October that she was still unable to open the file but that this did not substantially alter her position.
14. The bundle before the Tribunal at the hearing contained a schedule of works extracted from an inspection report commissioned by the Applicants. It did not identify the surveyor who undertook the report nor his terms of reference. By the Directions issued after the hearing the Tribunal directed that if the Applicants wished to rely on this report it would be necessary for the Respondent and the Tribunal to be provided with a copy of the complete survey by 16 October. The Applicants provided this.

### **The background**

15. The tribunal received an application from the Applicants dated 1 June 2023 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order in the sum of £12,000 in respect of 32 Woodberry Way London E4 7DX ('the **Property**'). The amount sought was twelve months' rent (at £1000 per month) calculated from 1 June 2022.
16. The application alleged that the Respondent had committed the offence of managing/controlling an unlicensed house for the period from 1 June 2022 to 26 April 2023 contrary to s95 of the 2016 Act, and the offence of harassment for the entire period of twelve months to 31 May 2023 contrary to section

1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the '**1977 Act**') (eviction or harassment of the occupiers)

17. The Directions issued on 27 June 2023 noted that the Applicants stated that they do not accept service by e mail but pointed out that there is no concept of 'service' in Tribunal proceedings. They stated that as the Tribunal was currently communicating by e mail that would be the means adopted unless either party could produce a good reason why this was not appropriate. It is unfortunate that the Applicants insisted on all communication being by post as it appears to have delayed their receipt of documentation. The Tribunal do not doubt that Ms Reeves, through her solicitors, attempted to serve her bundles on the Applicants by e mail.

### **The Property**

18. The Property is described in the application as a ground floor 2 bedroom flat in a converted house with two flats.

19. No party requested an inspection and the tribunal did not consider that one was necessary.

20. The relevant local housing authority is the London Borough of Waltham Forest. Its Selective Licensing Scheme, which came into force on 1 May 2020, which applies to all privately rented properties in Waltham Forest occupied either by a single-family unit or up to a maximum of 2 unrelated persons.

21. The Respondent is one of two registered proprietors of the freehold of the property and the landlord named in the tenancy agreement of 1 June 2022 which the Applicants provided to the Tribunal.

### **Issues**

22. The issues before the tribunal to determine were

- Had the Respondent committed an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the '**1977 Act**') (eviction or harassment of the occupiers)
- If the Respondent had committed an offence under the 1977 Act did she have reasonable grounds for doing the acts or withdrawing or withholding the services in question
- Had the Respondent committed an offence under section 95(1) of the Housing Act 2004 (the '**2004 Act**') (controlling or managing an unlicensed house which is required to be licensed);
- If so, the period during which an offence had been committed, and did the Respondent have a defence to the commission of the offence under section 95(4) of the 2004 Act?

- If an offence has been committed the maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
- Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

### **The tribunal's decision and reasons**

23. The tribunal has had regard to the witness statements in the bundle, the evidence heard and submissions made at the hearing and the decisions referred to below in reaching its decision.

24. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.

25. The relevant legal provisions are set out in the Appendix to this decision

### **Offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977**

26. As evidence of harassment Mr Murskyy referred the tribunal to the absence of services in June 2022, stating that this was because the Respondent had failed to pay the relevant utility bills so that the services had been cut off before the Applicants moved into the Property. He submitted that the Respondent had entered the property on a number of occasions without their permission and had spied at them and stared through their windows. Mr Murskyy also alleged that the Respondent had tampered with their mail, referring the Tribunal to a video clip that he had provided. He further submitted that the Respondent's demands for payment of rent constituted harassment because they were groundless and unreasonable, referring the Tribunal to the audio and video clips provided. He submitted that sending text messages late in the evening amounted to harassment.

27. Mr Murskyy alleged that Ms Reeves had prevented access over a communal side alley.

28. Ms Yurchuk provided a witness statement which alleged that the Respondent stared through their windows 'time to time' (sic), causing embarrassment and that she visited them, knocking on the door without having made a prior appointment. She stated that this conduct caused distress and inconvenience.

29. Ms Reeves denied harassing the Applicants. The lack of utilities during the first month of the tenancy was due to the previous tenant, who had been responsible for these, having died, it was not due to her having not paid bills that she owed. She gave evidence that until the utilities were reconnected she allowed the Applicants to use her electricity supply (Ms Reeves lives in the

house next door). Ms Reeves stated that she organised a gas boiler service and safety certificate.

30. Ms Reeves submitted that the occasions on which she had sought entry to the property had been when she was attempting to enter it to deal with repairs brought to her attention by the Applicants.

31. Ms Reeves submitted that she had never threatened violence or eviction. If she had ever raised her voice it would have been in frustration when Mr Murskyy refused to explain why he was withholding May's rent.

32. Section 1 (3) of the 1977 Act provides,

*If any person with intent to cause the residential occupier of any premises—  
(a) to give up the occupation of the premises or any part thereof; or  
(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;*

*does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.*

33. Section 1(3A) of the 1977 Act provides

*(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—*

*(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or*

*(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,*

*and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.*

34. At the hearing the Tribunal reminded the parties that, as stated in the Directions, the tribunal needs to be satisfied beyond reasonable doubt that an offence has been committed. The burden of proving this falls on the Applicants. It is for the Applicants to prove beyond reasonable doubt that the Respondent has committed an offence under s1(3) or s1(3A) of the 1977 Act.

35. The Applicants have not shown any intention by Ms Reeves to cause them to give up occupation of the property which they continue to occupy. The basis of the Applicants' claim under the Protection from Eviction Act is not one of unlawful eviction but one of harassment.

36. The Tribunal find, on the evidence before it, that the Applicants have not proved their case to the standard required.
37. The Tribunal find that the limited evidence before it as to Ms Reeves visiting the Property does not amount to harassment. That Ms Reeves lives next door increases the likelihood of visits and a number of these were in an attempt to arrange for repairs to be carried out or to enquire as to the non-payment of rent. The Tribunal finds that it is understandable that Ms Reeves spoke to Mr Murskyy about unpaid rent and does not find that oral demands for unpaid rent are unreasonable.
38. Ms Reeves provided a reasonable excuse for the lack of utilities during the first month of the tenancy and there was no evidence that the utilities had subsequently been withdrawn. The initial connection of the utilities would have been a matter between the Applicants and the relevant utility company.
39. The video clip which the Tribunal, but not Ms Reeves, has seen shows Ms Reeves doing something in connection with what may be a post box does not provide evidence that she was removing the Applicants' post.
40. The Tribunal is concerned that Mr Murskyy recorded a conversation with Ms Reeves without her knowledge or permission.
41. Mr Murskyy alleged that the Applicants had been prevented from using a side alley but there is no right granted by the AST under which the Applicants occupy the Property to use any side alley. The Property is described as including 'its back garden and half of driveway'.
42. The allegation of staring through the window of the Property may have embarrassed Ms Yurchuk but on the evidence before it the Tribunal does not find that it amounted to harassment.

#### **Offence under section 95(1) Housing Act 2004**

43. The parties agreed that the Property was one for which a selective licence was required. The issues before the Tribunal were therefore the period during which such offence was committed and whether Ms Reeves had a reasonable excuse for the commission of the offence.
44. Mr Murskyy submitted that Ms Reeves had committed the offence under section 95(1) of the 2004 Act from when the Applicants became tenants 1 June 2022 until 26 April 2023 until the selective licence was granted. He submitted that it was not sufficient that Ms Reeves had made the application on 19 February 2023 if she had not paid the relevant fee on that date. Mr Murskyy referred the Tribunal to the decision in *Longane and others v Mukahanana* LON/00AH/HMG/2018/0002, in particular paragraph 25 in which the Tribunal stated, '*an application cannot be treated as having been made for the purposes of Section 95(3) unless it is a complete application, and an*

*application which attracts a fee and which is clearly payable at the time of making the application cannot be considered complete unless and until payment is made.'*

45. Ms Reeves was unable to remember when she had paid the fee for the selective licence, but she was explicit in both written and oral evidence that she had made the application on 19 February 2023.
46. Mr Murskyy is not correct that the offence continues until the licence is granted. Under s95(3) (b) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time an application for a licence had been duly made in respect of the house under section 87.
47. Section 87 provides that the application must be made in accordance with such requirements as the authority may specify. From its website it is clear that the fee payable to Waltham Forest for a selective licence is in two parts, one paid when the application is made and the balance once the licence is granted. There is no evidence before the Tribunal that the first tranche of the payment was not made when the application was made.
48. The Tribunal is not bound by the decision referred to by the Applicants, and notes that it was a decision in respect of a different local authority, namely Croydon, which may have had different requirements in respect of applying for selective licences.
49. From the letter from Waltham Forest of 24 January it is clear no application had been made by that date. The e mail of 10 February referred to an application created but not yet submitted. By 29 March 2023 Waltham Forest indicated that the application had been made by then.
50. The Tribunal accept Ms Reeves evidence that the application was made on 19 February 2023 and therefore find that the offence ceased on 18 February 2023.
51. The Tribunal heard evidence from Ms Reeves that she had been unaware that the Flat required a selective licence, and had considered the arrangement with the Applicants to be short term. As soon as she became aware of the need for a selective licence she applied for one. Ms Reeves did not consider herself to be an experienced landlady although she confirmed that she owned other property (not in the borough) that was let. The flat had been let previously but that it had been unoccupied for 18 months before this letting. The upper flat in the building was sold on a long lease. Ms Reeves in cross examination confirmed that she had a housing background.
52. The Tribunal find that Ms Reeves did not have a reasonable excuse for committing the offence. Ms Reeves may not consider herself a professional landlord but she has a number of let properties, and housing related experience, and therefore should be aware of the need to keep abreast of



licensing requirements when letting property. Ms Reeves' prompt response when learning that a selective licence was required may be taken into account when considering her conduct in relation to the amount of the RRO.

### **Amount of the RRO**

53. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows

(a) ascertain the whole of the rent for the relevant period; (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant; (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 compared to other examples of the same type of offence; and (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).

54. The Tribunal have adopted the approach recommended in *Acheampong v Roman and others*

55. The Applicants are seeking repayment of the totality of the rent they paid during the period in which the offence was committed, which the Tribunal have found is the period from 1 June 2022 to 18 February 2023.

56. In the period from 1 June 2022 to 18 February 2023 the Applicants paid £1000 in June to February inclusive, with the exception of December when they paid £586. From the evidence before the Tribunal it appears that the reduced sum paid in December was because the Applicants replaced the electric shower, with the Respondent's agreement. This therefore returns the rent paid for December to £1000. The Tribunal have apportioned the rent paid on 1 February on a daily basis for that month to give an apportioned rent for the period 1 February to 18 February 2023 of £642.86.

57. The amount of rent paid for the relevant period during which the offence was committed is therefore £8,642.86.

58. The landlord had not paid for the utilities at the Property, except during the first month when Ms Reeves stated that electricity was provided from her adjacent house for which it appears from the papers before the Tribunal that the Applicants made a contribution for this cost to Ms Reeves.

59. In fixing the appropriate sum the Tribunal has had regard to *Acheampong v Roman and others* and also the decision in *Hallett v Parker* [2022] UKUT 165 (LC) and have taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.

60. Ms Reeves submitted that her failure to obtain a selective licence was a minor infringement, she had been unaware of the need for a selective licence but accepted that she had committed the offence until she applied for the licence on 19 February and had applied for one on becoming aware of its need.
61. The Tribunal find that the offence of failing to obtain a selective licence is not of the most serious type of offence. Ms Reeves failed to take sufficient steps to inform herself of the regulatory requirements associated with letting the Property but this was the first occasion on which she had let the property following the introduction of selective licensing in Waltham Forest, and hence the first occasion when a licence was required and Ms Reeves applied for and was granted a licence as soon as she became aware that one was required.
62. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
63. Ms Reeves stated that she had never been convicted of an offence to which the Chapter of the 2016 Act applies. Ms Reeves made no submissions as to her financial circumstances for the Tribunal to take into account.
64. The Tribunal note that the Respondent had not at any time been convicted of a relevant offence and that she chose not to provide evidence as to her financial circumstances.
65. Ms Reeves submitted that she considered that she had been a good landlord. Ms Reeves stated that until the expiry of the contractual term of the AST lease she had believed that she had a good relationship with the Applicants and that their complaints had arisen after its expiry. Ms Reeves submitted that the rent at which she had permitted the Applicants to occupy the Property was below the market rent. She referred to no rent having been paid in May 2023, only £10 in July 2023, £760 in August and no rent having been paid in September 2023.
66. Ms Reeves submitted that she had endeavoured to deal with the Applicants' complaints as to repair. As to the Applicants' complaints about dampness and mould Ms Reeves submitted that the Applicants did not properly ventilate the Property which led to excessive condensation.
67. Ms Reeves gave evidence that the Tenant has carried out various works to the Property without her permission, and had not made payments of rent.
68. In making its determination the Tribunal has had regard to the decision in *Kowalek v Hassanein Limited* [2021] UKUT 143 (LC), that in taking into account the conduct of the Tenant this may include taking into account the

conduct of the tenant in relation to the obligations of the tenancy, in particular that failing to pay rent is a serious breach of the tenants' obligations.

69. Mr Murskyy gave evidence that the rent withheld had been spent on items which he submitted were necessary by reason of the state of repair of the Property or to repay him for work which he had carried out to the Property.
70. The Tribunal heard evidence from Mr Murskyy as to what he considered to be the want of repair at the property. He referred the Tribunal to the inspection report the whole of which he provided to the Tribunal after the hearing in accordance with the Tribunal's directions and the Tribunal have therefore considered it.
71. The Tribunal find that the only objective evidence of the state of repair of the Property is in the inspection report. It identifies condensation as the primary issue with associated dampness and mould. The report recommends certain improvements but is silent on the influence if any of the Applicants' lifestyle including the production of moisture, the ventilation of the property and the use made of the heating system all of which are likely to be relevant to any condensation issue. The Tribunal has therefore placed limited weight on the recommendations that it contains, without having had the opportunity to cross examine the author.
72. The Tribunal finds that Mr Murskyy has not provided a satisfactory explanation for making the rent deductions, where they relate to work that the Applicants carried out to the property without the landlord's permission and without giving her the opportunity of addressing the issues raised. There was no agreement by Ms Reeves that the Applicants could improve the Property but the Tribunal finds from the evidence before it that this is what they have done. They have also undertaken repairs, properly the responsibility of the landlord, without her permission or agreement. The responsibility for repair under the AST lies with the Landlord not the Tenant. The audio evidence provided by Mr Murskyy showed that he had been obstructive in allowing her to effect repairs.
73. Mr Murskyy had given evidence and provided a photo of a tent which he stated the family had had to live in while work was being carried out to the Property. On cross examination he accepted that this was to facilitate works which he had elected to undertake to the Property.
74. As for the invoices which Mr Murskyy provided in his bundle to justify the reduction or non-payment of rent in the months in question the Tribunal finds that a number of the invoices do not go to the repair or improvement of the Property (eg the invoices for duvet and portable heaters).
75. The Tribunal finds that Mr Murskyy should not have undertaken the works which he did without a court order or the landlord's permission and it was

wrong to deduct the cost of those works from the rent owed to Ms Reeves. It has taken this conduct into account in determining the amount of the order.

76. While the Tribunal did not find that the actions of the Respondent complained of by the Applicants amounted to harassment it has considered the evidence provide by Mr Murskyy in the context of the Landlord's conduct.
77. The Tribunal finds that the texts complained of by the Applicants were generally friendly in tone and designed to facilitate repair works.
78. The Tribunal considers it possible that the Respondent living next door may have given rise to more frequent visits to the property that might be usual.
79. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of the conduct of the parties, the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,457, being 40% of the rent paid for the relevant period.

**Name:** Judge Pittaway

**Date:** 7 November 2023

### **Rights of appeal**

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

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

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

## **Appendix of Relevant Legislation**

### **Protection from Eviction Act 1977**

#### **1 Unlawful eviction and harassment of occupier.**

(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the

premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

### **Housing Act 2004**

#### **87 Applications for licences**

(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

(4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).

(5) The appropriate national authority may by regulations make provision about the making of applications under this section.

(6) Such regulations may, in particular—

(a) specify the manner and form in which applications are to be made;

(b) require the applicant to give copies of the application, or information about it, to particular persons;

(c) specify the information which is to be supplied in connection with applications;

(d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);

(e) specify cases in which no fees are to be charged or fees are to be refunded.

(7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—

(a) all costs incurred by the authority in carrying out their functions under this Part, and

(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

## **95 Offences in relation to licensing of houses under this Part**

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) 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 90(6), and

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

(3) 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 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

1. (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
2. (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

3. (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
4. (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.

(9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

### **Housing and Planning Act 2016**

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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



	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

#### **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.
- (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.

#### **43 Making of a 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 had 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 with –

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

#### **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***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

***the amount must relate to rent paid by the tenant in respect of***

the period of 12 months ending with the date of the offence

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.