FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/HMG/2022/0021**
Property	**:**	**79 Hornsey Park Road, London N8 0JU.**
Applicants	**:**	**Elisabeth Guthrie** **Kate Krynowsky** **Georgia Dickinson** **Giulia Gustini** **Peter Mitchell** **James Parslow**
Representative	**:**	**Ms Roz Spencer of Safer Renting**
Respondents	**:**	**Ms Muherennessa Rosie Jamal** **Mr Quamrul Abedin**
Representative	**:**	**Not represented**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Foskett, Ms L Crane MCIEH**
Date and Venue of: Hearing		**5 December 2023 (10 Alfred Place – in person)**
Date of Decision	**:**	**20 December 2023**

DECISION

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(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the First Respondent, Ms Jamal, to pay £8,081.01 to the Applicants, to be split between them *pro rata* in accordance with the sums they paid for the period 1 February 2021 to 31 July 2021.

(2) The Tribunal orders that the First Respondent is to reimburse the fees of £300 paid by the Applicants in bringing this application.

(3) Payment under paragraphs (1) and (2) above is to be made within 28 days of this Decision being issued to the parties by email.

(4) No order is made against the Second Respondent.

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 40 to 44 of the Housing and Planning Act 2016 ("the 2016 Act"). They seek an order in respect of the period from 1 February 2021 to 31 July 2021. The Application originally stated that the amount of repayment sought was from February to September 2021, but it was confirmed at the hearing that in fact they only sought repayment for the period to 31 July 2021.

2. The application was made on 26 May 2022. It 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"). Following a request from the Tribunal, the First Applicant clarified by email on 26 July 2022 that she was making the application on behalf of all the tenants who lived at the Property from 1 February 2021 to 5 September 2021; Mr Parslow, the Sixth Applicant, was added in March 2023. The relevant period in respect of which a rent repayment order is sought ends on 31 July 2021, at which point the Respondents did not have the allegedly relevant HMO, and accordingly the application needed to be made by 31 July 2022. Even though the Second to Fifth Applicants only signed the application on 1-3 August 2022 and the Sixth Applicant was only added as a party in March 2023, the Tribunal determines that those steps simply formally joined the other Applicants to the application that was made back in May 2022.

Procedural Background

3. Directions were first given by Judge Hamilton-Farey on 3 February 2023 and the deadlines therein were subsequently amended on 29 June 2023 and 20 July 2023. The Directions contained an Annexe which set out the issues that the Tribunal would consider on its final

determination, namely:

The issues for the tribunal to consider include:

- *Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences:*

	Act	*Section*	*General description of offence*
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

- *Did the offence relate to housing that, at the time of the offence, was let to the tenant?*
- *Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?*
- *What is the applicable 12-month period?*[1]
- *What is the maximum amount that can be ordered under section 44(3) of the Act?*
- *What account must be taken of:*

  (a) The conduct of the landlord?

[1] s.44(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

(b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time been convicted of an offence shown above?

(d) The conduct of the tenant?

(e) Any other factors?

4. The Directions also contained directions in relation to bundle preparation and notes that the parties may wish to print out a copy of the e-bundles for use at the hearing.

5. Following some delays on the part of the Respondents (with the Second Respondent stating that he had not received earlier Tribunal correspondence), both parties submitted e-bundles for the hearing.

6. The Tribunal has read both e-bundles, together with the Skeleton Argument of the Applicants dated 4 December 2023 and an email sent by the Second Respondent on 4 December 2023 making various written submissions and apparently prepared with some pro bono legal assistance.

7. On 25 September 2023, notice of the hearing on 5 December 2023 was sent to all parties.

The Hearing

8. The hearing was listed for 10.00am. The Applicants' representative, Ms Spencer of Safer Renting, attended, together with Ms Guthrie and Ms Dickinson (two of the Applicants). The Second Respondent attended and confirmed that he was representing himself and his sister, the First Respondent, because she was not well enough to attend (although no medical evidence to this effect was adduced). The Respondents also adduced a short email statement from Mr Demetrious Monoyious and Mr Monoyious attended.

9. Ms Guthrie gave oral evidence, after confirming her witness statement as true, and was cross-examined by the Second Respondent. The Second Respondent and Mr Monoyious gave oral evidence and were cross-examined by Ms Spencer. The Tribunal also asked a number of questions of all witnesses.

The Legal Background

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

11. 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 2016 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.

12. 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).

13. 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.

14. 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).

15. 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."

16. 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.

17. 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.

18. 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.

19. An order may only be made under section 43 of the 2016 Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.

20. 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.

21. By section 44(2) of the 2016 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 paid in respect of the rent under the tenancy must be deducted.

22. Section 44(4) of the 2016 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

23. There was no dispute between the parties as to the following:

(1) The building was a HMO for the period 1 February 2021 to 31 July 2021. It had over two floors: 5 bedrooms, two shared bathrooms, a shared kitchen and a shared living room. It also had a shared garden. It was during the period 1 February 2021 to 31 July 2021 occupied as their main residence by 5 adults who did not form a single household and it was the only use of the accommodation and they all paid rent. An occupancy table was provided in the Applicants' bundle at page 33 and was not challenged by the Respondents.

(2) A mandatory licence was required for the period of 1 February 2021 to 31 July 2021 and neither Respondent held such a licence in respect of the Property.

(3) The First Respondent, Ms Jamal, was the named landlord in the Applicants' tenancy agreements and received the rent for the various rooms in the Property.

24. The Second Respondent gave evidence on behalf of his sister, the First

Respondent, that she had commenced the process of applying for a licence in February 2021 but that, due to family and personal health emergencies, she had had to leave the UK in June 2021, abandoning the application, and only returning at some point during 2023. The First Respondent did not attend and, despite the directions providing for the provision of evidence and being quite clear as to the matters which the Tribunal had to decide, she had not put forward any direct evidence herself. There was no documentary record of the alleged February 2021 application and the Second Respondent did not know whether the First Respondent had paid a fee when she allegedly made the application. The Second Respondent's evidence in relation to this was that the February 2021 application was effectively erased when he eventually obtained login details from his sister and was able to progress it online.

25. The documents in the e-bundles show that Haringey Council only received the HMO licence application in November 2021, some months after the Applicants had all moved out. Further, the only documentary evidence of a licence being granted was an email in November 2022 (i.e. a year later) by which the Second Respondent was granted a HMO licence on reduced terms (i.e. only for one year and with certain conditions attached). The Second Respondent first gave evidence orally that he had obtained a licence for the property very soon after the Applicants moved out (i.e. September 2021). When the Tribunal questioned him about the documents in this regard being dated later, he suggested he had not remembered the precise date correctly, but repeated that he had obtained a licence only a few months after the Applicants had moved out. That is simply not borne out by the documentary record and it was clear to the Tribunal that the Second Respondent's memory in relation to the dates was not at all clear. Accordingly, the Tribunal finds that the documentary material is to be afforded more weight and finds that the application was not made until November 2021 and was not in fact determined until a year later and, even then, was only granted on limited terms, which demonstrates a residual concern on the part of Haringey Council as to either the Respondents' fitness and/or the fitness of the Property itself.

26. The Tribunal accepts that the Respondents must have made some effort to submit an application at some point before November 2021, because there is evidence in emails between the Second Respondent and Haringey Council to the effect that the Second Respondent was seeking to make the application online and was being thwarted by the fact that the application was already being progressed by someone else, according to an error message on the screen. In that regard, the Second Respondent's evidence and that of Mr Monoyious is accepted, but that does not demonstrate that an application had actually validly been made at any time prior to November 2021. In fact, the evidence suggests the opposite: the fact that there is no documentary record of any submission of the application in February 2021 suggests that it was not submitted and was in fact simply left uncompleted. That is insufficient to afford a defence to the First Respondent. The Tribunal

notes and expresses its sympathy for the First Respondent's personal circumstances at the time (which involved her own serious ill-health and the death of her husband), but the First Respondent appears to have relied on the Second Respondent from that time onwards and the Tribunal does not accept that he made any valid application for a licence before November 2021. Although he repeatedly asserted that he obtained a licence very quickly from Haringey Council, the emails did not bear this out and the Second Respondent had not even included in his e-bundle a copy of the licence actually granted so that the Tribunal could see its full terms.

27. 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 was committing an offence throughout that period – subject to their having a statutory defence.

28. The Tribunal first considered whether both Respondents were a person having control of the Property. Rent was paid to the First Respondent only, as shown in the evidence of rent payments and as explained both in writing and orally by Ms Guthrie. The Tribunal accepts that evidence. If the rent charged were a rack rent then it was received by the First Respondent and, if not, she would have received it if the rent were a rack rent, as rent was payable to her under the terms of the relevant tenancy agreements. It follows that the First Respondent was a person having control of the Property within the statutory definition.

29. The Tribunal also considered its obligation to consider whether or not a defence of reasonable excuse applied in this case and the bulk of the hearing (which lasted until lunchtime) was taken up with exploring this issue.

30. The Second Respondent's evidence was extremely confused and contradictory on this point. Essentially, the Respondents raised 3 points by way of reasonable excuse: (1) the personal/health circumstances of the First Respondent; (2) the attempt made to submit an application as early as February 2021; and (3) the Applicants' alleged blocking of access to the Property by the Respondents' tradespeople.

31. The Tribunal has dealt at paragraphs 24 and 26 above with the position in relation to the First Respondent's health.

32. The Tribunal has dealt at paragraphs 24-26 above with the position in relation to the alleged application made in February 2021.

33. As to the alleged lack of access to the Property, the Second Respondent repeatedly asserted that on around 6 occasions, he had arranged for

two builders (either a Mr David Smart or a gentleman named Adam) to attend the Property to carry out works in connection with the HMO licence application. He had no documentary material in support of this assertion (such as screenshots of text messages or copies of receipts for call-out charges or similar) and the Tribunal was unable to accept it because the Second Respondent could not clearly recall the dates or evidence them and asserted that the visits were aborted because the Applicants (or some of them) blocked the builders' access. Ms Guthrie denied this, save that she noted that one of her flatmates had once failed to let a builder in when he attended unannounced and she was in the shower. The Tribunal accepts Ms Guthrie's account and rejects the Second Respondent's – the Second Respondent repeatedly stated that the Applicants had blocked the access because they wanted to pursue him for a rent repayment order, but, on questioning by the Tribunal, he accepted that the alleged 6 attendances pre-dated the end of July 2021 which is the first time that the Applicants had discovered the relevant legislation in relation to HMOs/rent repayment orders.

34. It follows therefore, that the Tribunal was satisfied that, throughout the relevant period (i.e. 1 February to 31 July 2021), the First Respondent as the person having control of the Property (via her brother as her agent) was guilty of an offence contrary to section 72(1) of the 2004 Act.

Jurisdiction to Make an Order

35. 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 2016 Act. This required considering whether or not the First Respondent was the Applicants' immediate landlord.

36. In determining this question, the Tribunal needed to look no further than the tenancy agreements of the Applicants. The Respondents had not produced full copies of these and the Applicants did not have them, because the Second Respondent had taken them away after they had been signed. However, the first page of Ms Guthrie's had been included and the First Respondent was stated to be the landlord. This was not in dispute. The Tribunal, therefore, had jurisdiction to make an order against the First Respondent for the period in question.

Amount of Order

37. 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) at paragraph 20. The first step is to ascertain the whole of the rent for the

relevant period.

Rent

38. The Tribunal was satisfied that the Applicants paid rent in respect of their occupation of the Property of £2400 per month, save for a short period in early February 2021 when one room was unoccupied. A schedule of rent payments made is at pages 15-16 of the Applicants' bundle and proof of those payments is at pages 17-32. In the period from 1 February 2021 to 31 July 2021, a total of £14,840 was paid in rent to the First Respondent. The evidence shows that for the period, Ms Guthrie received Housing Benefit of £771.65 and £600 of the total represented a deposit. Accordingly, the full amount of rent was £14,840 less £600 less £771.65, which totals £13,468.35.

Utilities

39. That figure for rent given above did not include any payments for utilities which, on the evidence of Ms Guthrie (which the Second Respondent did not challenge and which the Tribunal accepts), were paid directly to the utilities companies by the Applicants.

Seriousness of Offence

40. 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 two e-bundles, the Applicants' Skeleton Argument and the Respondent's email of 4 December 2023.

41. 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 40% from the total maximum award.

42. It accepted that the First Respondent is not a full-time professional landlord, although she does – via her brother – let two other properties as well as the subject property. However, if she was unable to fulfil her obligations as a landlord due to her personal/health circumstances or lack of knowledge as to the legal requirements, she could have appointed a competent manager to do this on her behalf. When the Tribunal asked the Second Respondent why this had not been done, there was no satisfactory answer.

43. Further, the First Respondent did not protect the tenancy deposits in a statutory scheme and there was no satisfactory explanation for this failure. The Second Respondent's response to why this was not done was simply to say that if the tenants were happy with their own deposit arrangements, then that was fine by him, which is not a justifiable approach to the protection of deposits.

44. Further, the Second Respondent failed to adduce evidence of the council's conditions attached to the licence which was eventually granted in respect of the Property. The Tribunal therefore draws the inference that the council set a time-limit on the licence because it had residual concerns about either the Respondents' abilities as landlords and/or about the fitness of the Property. The Second Respondent admitted that some fire door works remained to be done, but gave evidence (which the Tribunal accepts, because the council did grant some form of licence, albeit for a limited time) that other works had been done.

45. The Tribunal bore in mind that the text messages adduced indicated a broadly good relationship between the Applicants and the Second Respondent when he managed the Property. Although a toilet remained broken for most of the duration of the Applicants' occupation, it appears that the Property was generally in good condition and that minor issues were dealt with reasonably promptly.

Section 44(4)

46. 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.

47. The Second Respondent suggested that the Applicants' conduct had been poor because they had effectively blocked his access to the Property to carry out necessary works once they had discovered that they might have a case for a RRO. However, the Tribunal does not accept that the Applicants showed any bad faith here. The only evidence of alleged blocked access has been dealt with at paragraph 33 above.

48. There was no evidence as to the Respondents' financial circumstances.

49. There was no evidence of the commission of any other offences by the Respondents.

50. 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.

51. The Tribunal therefore decided to make a rent repayment order against the First Respondent for the sum of £13,468.35 x 60% = £8,081.01.

52. The Tribunal was satisfied that, given the Applicant's success, it was just and equitable to make an order requiring the First Respondent to re-imburse the Applicants the hearing fee of £300.

Name:	Judge Foskett, Ms L Crane MCIEH	**Date:**	20 December 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.