FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMG/2023/0019**
Property	**:**	**9b Sandys Row, London E1 7HW**
Applicants	**:**	**Joe Abbott** **Aleksander Okrojek**
Representative	**:**	**Mr Muhammed Williams, Environmental Health and Trading Standards, London Borough of Tower Hamlets**
Respondent	**:**	**John Antony Newell**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and Venue of Hearing	**:**	**27th November 2023;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20th Decoember 2023**

DECISION

The Respondent shall pay to each Applicant a Rent Repayment Order in the amount of £5,760.

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

Reasons

1. The Applicants were tenants at the subject property at 9b Sandys Row, London E1 7HW, a 3-bedroom split-level flat. (There was a third tenant, Mr Horsman, who decided not to join in this application.) The First Applicant moved into the premises in March 2019 and the Second Applicant in 2018 and both left in September 2022.

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2. The Respondent was the leasehold owner of the subject property and the Applicants' landlord. He eventually sold the property on 19th May 2023 and no longer operates as a landlord.

3. The Applicants each seek a rent repayment order ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act") for up to £7,200 for the following periods:

- First Applicant from 18th July 2021 to 18th June 2022;
- Second Applicant from 23rd August 2021 to 29th July 2022.

4. The hearing of this matter was in person and took place on 27th November 2023. The attendees were Mr Williams of the London Borough of Tower Hamlets (LBTH), acting as the Applicants' representative, and the Respondent, representing himself and accompanied by his wife.

5. The documents before the Tribunal consisted of:

- The Applicants' bundle of 85 pages;
- The Respondents' bundle of 101 pages;
- A Brief response from the Applicants;
- A document, unsigned and undated, which purported to be a statement from a former tenant, Ms Fiona Betts; and
- A Skeleton Argument from the Respondent.

Late Evidence

6. By email dated Sunday 26th November 2023, the day before the hearing, the Respondent provided new documents. This included a spreadsheet purporting to show the rent actually paid by each Applicant during their periods of claim. Paragraph 11(e) of the Tribunal's directions required the Respondent to include within his bundle evidence of the amount of rent received in the period. In fact, the Respondent clarified that the spreadsheet was just an analysis of figures drawn from the Applicants' documentary evidence. He admitted that he had not gone through his own records and was unaware of whether rent was paid for the periods without supporting documents, i.e. he was not asserting that rent was unpaid rather than putting the Applicants to proof that it was. On that basis, the spreadsheet merely put into writing part of the Respondent's submissions, rather than providing any new evidence, so that there was no reason to exclude it.

7. The other new documents consisted of two pages with screenshots of WhatsApp messages between the parties about pest control and rent payment. Mr Williams said that the Applicants were confident they had the material to answer the new evidence so that they had no objection to its admission. On that basis, the Tribunal allowed it in.

The offence

8. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondent was guilty of having control of a house which is required to be licensed but is not so licensed, contrary to section 95(1) of the Housing Act 2004 ("the 2004 Act").

9. LBTH introduced a selective licence scheme in 2016 covering all privately rented properties within in the wards of Whitechapel, Weavers, Spitalfields and Banglatown. This included houses in multiple occupation (HMOs) that were not within the statutory mandatory scheme, being occupied by two to four people living as two or more separate households who share facilities. The Scheme was renewed on 1st October 2021 after the first one expired.

10. The subject property is within one of these wards. LBTH sought to warn the Respondent about the licensing requirements by letters dated 1st October, 15th November and 20th December 2019 but the Respondent admits that he failed to update his address at the Land Registry until the following year so that the letters, having been sent to his old address, didn't reach him. Apart from one visit to the property when no-one answered the door, LBTH took no follow-up action due to the restrictions arising from the COVID pandemic.

11. The Respondent pointed to an email dated 19th December 2022 (page 64 of the Applicants' bundle) in which Mr Williams told the Applicants, "Your landlord applied for a Selective licence on 03/10/2019. Warwick Properties Limited was granted a probationary Selective licence from 29/12/2020 to 28/12/2021." In fact, this was a mistaken reference to another property altogether as shown by the reference to Warwick Properties Ltd which was never involved with the subject property.

12. The Respondent spent considerable time in cross-examination on whether there was a separate tenancy for each tenant or one tenancy with a changing roster of tenants but the Tribunal cannot see how this is relevant to the issues it has to determine other than in relation to the Applicants' conduct which is considered further below. The Respondent did not really dispute that the arrangement constituted a HMO at all material times, whether there was one, two or three tenancies.

13. The Respondent asserted instead that he had a reasonable excuse for having control of or managing the property without its being licensed which is a defence under section 95(4) of the 2004 Act. He pointed to the Upper Tribunal's guidance in *Marigold v Wells* [2023] UKUT 33 (LC); [2023] HLR 27:

> 48 The Tribunal in *Perrin* [*v HMRC* [2018] UKUT 156 (TCC)] concluded its decision with some helpful guidance to the FTT, much of which is equally applicable in the sphere of property management and licensing. At paragraph 81 it said this:

"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

(I have omitted a fourth step because it is referable to a specific provision of the Finance Act 2009 and has no equivalent in the 2004 Act).

49 The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:

"82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

14. The Respondent relied on the following alleged facts:

(a) He did not know about LBTH’s Selective Licensing scheme.

(b) Licensing in general, and LBTH's scheme in particular, are not well-known.
(c) Although LBTH did write to him about the scheme, they did so to his old address which he had failed to amend on the Land Registry.
(d) He changed his address at the Land Registry when he became aware in January 2020 that the fact it was out of date might have resulted in mail going astray.
(e) His tenants, including the Applicants, did not pass on to him mail which arrived in his name at the property.
(f) The owner of the neighbouring flat, number 9a, was granted a selective licence but required to carry out some works. He informed the Respondent of this in around mid-January 2020. The Respondent decided to carry out the same works in his property.
(g) The neighbouring owner's managing agent told him that Ms Cherie Herbert, an LBTH officer, wanted to speak to him. He phoned and emailed Ms Herbert a couple of times but she did not reply. He assumed LBTH would have been happy with what he had done or that the licensing requirements only applied because the neighbouring property was used for AirBnB.

15. Although the Tribunal accepts that the Respondent was ignorant of LBTH's Selective Licensing scheme, he ought not to have been. Becoming a landlord is a serious undertaking – a landlord can literally hold the lives of their tenants and their families in their hands. It is not so much that ignorance of the law is no excuse but that it is incumbent on landlords to familiarise themselves with the legal requirements to which they are subject.

16. The Respondent rents out just the one property but he has done so since 2006. In that time, his efforts to keep himself apprised of his obligations consisted solely of some online searches. He has never sought professional advice, whether from a lawyer or a managing agent. He has never even considered joining any of the local or national landlords' organisations, most of which provide their members, and sometimes even non-members, with regular updates on matters they should be aware of. Even when he learned that the local authority had requirements of landlords, his efforts at communication were minimal and he proceeded on the basis of assumptions for which he had no evidence. His online searches did not even extend to going on LBTH's website to see if it could tell him anything relevant.

17. The Respondent said that he effectively inherited sitting tenants when he purchased the property and the tenancy has continued without interruption over the years and without any significant management issues. However, this is to miss the point of keeping up with the latest management standards – they exist to minimise the possibility that something may go wrong and to maximise the chances of a positive outcome if it does. A landlord may well get lucky so that no such standards need to be invoked but they cannot rely on that state continuing forever. There may never have been a fire but it only takes one to cause a disaster.

18. The Respondent's attempt to put at least some of the blame on his tenants does not put him in a good light, for two reasons:

(a) The Respondent never gave his tenants any instructions or guidance as to what he wanted done with mail not addressed to them. Understandably, the Applicants did not touch mail which was not theirs. Therefore, there is no reason to criticise them for failing to forward mail.
(b) An HMO requires active, not reactive, management. A landlord of an HMO cannot wait for tenants to tell them of problems but needs to carry out regular inspections in order to keep on top of issues. The fact that any mail addressed to him at the property was never picked up demonstrates that the Respondent never did this.

19. In the Tribunal's opinion, the matters relied on by the Respondent do not remotely constitute a reasonable excuse for his failure to get the property licensed.

20. Therefore, the Tribunal is satisfied so that it is sure that the Respondent has committed the offence of having control of the property which was required to be licensed but was not. Further, the Tribunal is satisfied that he was committing this offence from the commencement of the first licensing scheme in 2016 until the Applicants left in 2022, including the periods of claim.

Rent Repayment Order

21. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make a RRO on this application. The Tribunal has a discretion not to exercise that power but, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO nor did the Respondents put any forward.

22. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation. The law was changed after *Parker v Waller* by the 2016 Act and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 14. ... under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits.
>
> 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the

> balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. ...

23. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

> 43. ... "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 ... is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.
>
> 50. I reject the argument ... that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

24. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 15, Judge Cooke stated,

> it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it.

25. The current Tribunal finds it difficult to follow this reasoning and cannot find the basis for the inference in Fancourt J's judgment in *Williams v Parmar*. Although RROs are penal, rather than compensatory, they are not fines. Levels of fines for criminal offences are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. In this way, the courts ensure that there is consistency in the amount of any

fine – each person convicted will receive a fine at around the same level as someone who committed a similar offence in similar circumstances.

26. However, an RRO is not a fixed amount. The maximum RRO is set by the rent the tenant happened to pay. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

27. For example, in *Raza v Anwar* (375 Green Street) LON/00BB/HMB/2021/0008 the Tribunal held that, as well as having control of and managing a house in multiple occupation which was required to be licensed but was not so licensed, contrary to section 72(1) of the 2004 Act, the landlord was guilty of using violence to secure entry to a property contrary to section 6 of the Criminal Law Act 1977 and unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. Nevertheless, the RRO was for only £3,600 because the rent was so low at £300 per month. The Tribunal commented at paragraph 57 of their decision:

> The maximum amount of the RRO is in no way commensurate with the seriousness of [the landlords'] behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it.

28. In the Tribunal's opinion, there is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO and section 44(3) finds expression in that way. Further, the Tribunal cannot find anything in Fancourt J's judgment in *Williams v Parmar* to gainsay this approach.

29. Judge Cooke went on in *Acheampong* to provide guidance on how to calculate the RRO:

> 20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
>
> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to

other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

30. The whole of the amount paid by the Applicants for their occupation of the property over a period of 12 months was £7,200 each. The Respondent challenged this. The Second Applicant did not have bank statements showing all his rent payments but he explained that this was because he used to have a bank account back home in Poland but it has since been closed and he has been unable to get electronic or paper copies of his former account.

31. It would have been easy enough for the Respondent to have reviewed his own records and disclosed any that supported his case that rent might not have been paid. However, he expressly admitted that he had not done so and, in fact, did not know whether or not the Applicants had paid all their rent for the relevant period. Both Applicants gave unchallenged evidence that the Respondent would have chased them if they had been in arrears but there was no evidence that he did so.

32. The Tribunal found the Applicants to be credible witnesses. They gave their evidence in a straightforward, consistent manner and conceded matters when appropriate. The Tribunal accepts their evidence that they paid the amount claimed.

33. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke's reasoning. However, the Applicants' rent was not inclusive of any utilities so there are no deductions to be made on this count.

34. The next step is to consider the seriousness of the offence. The Tribunal considers that the fact that the Respondent had control of and managed a property for such a long time without making any efforts to apprise himself of his obligations, let alone to apply for a license, puts this at the serious end of the spectrum for the offence under section 95(1) of the 2004 Act.

35. Under section 44(4)(a) of the 2016 Act, the Tribunal must take into account the parties' conduct. The Respondent made a number of points in mitigation:

(a) He said he kept a respectful distance, respected the tenants right to quiet enjoyment at all times, was never intrusive whilst remaining attentive and responsive at all times. However, as referred to above, such reactive management is not suitable for a HMO, something he might have found out about if he had ever made proper efforts to do so.

(b) He said he was fair and reasonable as a landlord. In the Tribunal's opinion, this is a minimum requirement, not something which should be rewarded.
(c) He did not seek an order for possession during lockdown when the tenants fell into very substantial rent arrears of around £6000. In fact, he would not have been permitted to seek such an order. Moreover, the claim of rent arrears rested on his claim that the Applicants were liable to cover the rent of a third tenant for the 10 months before they found Mr Horsman to replace Ms Betts. The Tribunal is not satisfied that he established they were so liable.
(d) He adopted a lenient and reasonable attitude to late payment of the rent by the Applicants thoughout their tenancies.
(e) He ensured the flat was a safe and decent home for his tenants. The obvious retort is that he did not because he did not apply for a licence. His efforts remained squarely within the limits of his ignorance of any relevant requirements.
(f) He charged a very fair rent far below the market rate. In fact, he sought to make the Applicants pay rent to cover periods when they were the only ones in occupation so that he was not receiving the rent of a third tenant. While he was insistent that his tenants were jointly and severally liable for the whole rent of the property, he had no evidence that the Applicants had entered into their tenancies on that basis, not least because he did not issue them at the time with written agreements.
(g) He says he always responded swiftly to any reports of issues in the property and had them rectified as soon as practicable. In particular, he purchased a new oven because the Applicants complained the old one was making a noise, had a new toilet and cistern installed and paid for the property to be decorated. However, these are just the ordinary functions of a landlord and the Respondent does not deserve credit just for doing what he is required to do anyway.
(h) He provided references for the Applicants when they left. It does not say much for the Respondent that he relies on not being mean or petty in refusing references to tenants with whom, at the time at least, he had no issue.
(i) He invited the Applicants to take whatever furnishings they wanted when they left as the flat was being sold.
(j) He remained on good terms with his tenants at all times.
(k) Many tenants stayed at the property for several years. Fiona Betts for 7 years. Matt before her for 8 years. Both of the Applicants themselves lived in the property for 3 or 4 years and neither indicated a desire to leave. The First Applicant even messaged the Respondent saying he was sad to be leaving. The Applicants responded to this point by saying that they only found out about their rights after leaving and it is only in retrospect that they realised what had been at fault during their tenancies.

36. The Respondent also accused the Applicants of poor conduct:

(a) He initially asserted, but then later withdrew the allegation, that important correspondence sent to the property by LBTH was not passed

to the Respondent by the Applicants and/or deliberately concealed by them for financial gain motivated by greed.

(b) He alleged that both Applicants had shown a propensity to dishonesty in this application, making allegations that are patently and demonstrably untrue and have cynically and wrongly sought to portray the Respondent in a bad light at every opportunity. While the Tribunal did not accept everything said on behalf of the Applicants, the Tribunal is satisfied that this claim is not just an exaggeration but simply wrong.

(c) He alleged that the Applicants removed smoke alarms and then alleged that no smoke alarms were fitted. However, he had no evidence that they ever removed any alarms. Also, the Applicants accepted that the Respondent eventually installed fire alarms but had photographic evidence that at least one alarm was missing from its bracket. Also, such evidence as there was, such as Ms Betts's assertion that she bought the alarms herself, suggested that at least some alarms inside the property were battery-operated and not connected to the mains as they should have been. There was a fire risk assessment for the communal areas from July 2021 but it did not provide any evidence in relation to the interior of the property.

(d) He asserted that the Applicants advertised for a flatmate and in the advert indicated that smoking at the property was permitted when they had told the Respondent no one smoked in the Flat. There is nothing inconsistent with an advert wrongly stating that smoking was permitted but that no-one smoked at the property. The Tribunal accepts the Applicants' evidence that they did not smoke – the Respondent had no evidence to the contrary.

(e) He alleged that the Applicants installed a communal bar in the lobby area on the first floor of the property without his permission or consent. However, the "bar" in the photo looked as if the tenants had just made a temporary arrangement. There did not appear to have been any structural alterations which would have required the Respondent's consent.

(f) He alleged that the Applicants held unlawful parties at the property during lockdown causing a longstanding tenant, Ms Betts, to feel so unsafe at the property that she decided to leave despite having lived there for 7 years. In fact, in her statement she says she did not know which tenant held parties, gave no detail of these alleged parties and gave this as only one amongst a number of reasons why she eventually left.

(g) He repeated his allegation of rent arrears during COVID and further alleged that rent was frequently paid late. Again, his complete lack of effort to disclose relevant records undermines these allegations.

37. The Respondent also pointed out that he is not continuing as a landlord, having sold the property, and so there is no deterrent effect on him from any RRO.

38. The Applicants made a number of allegations against the Respondent and in relation to his management of the property:

(a) The Respondent did not attempt to provide a written tenancy agreement until November 2020 when he presented a draft which was only for 2

tenants and would have made those two liable for the rent previously paid by 3. The Applicants refused to sign it.

(b) The Respondent never protected the tenants' deposits, contrary to the 2004 Act. He said the tenants knew he kept them safe but, consistently with the rest of his behaviour, he never made any effort to find out his obligations in this regard.

(c) They alleged that fire alarms were not fitted until relatively recently. The Respondent disputed this, as referred to above.

(d) They alleged the existence of a continuous mice and rat infestation. However, the Applicants had little evidence of its severity and even less that the Respondent, as the leaseholder of the flat rather than the freeholder, was responsible.

(e) They alleged that the boiler frequently broke down, leaving them without heating and hot water for up to 5 days repeatedly. The Respondent accepted that it was old and occasionally required re-pressurising but claimed to have always attended promptly to any problems and that it was regularly serviced. He also claimed that he could not find a contractor to take on the job of replacing the boiler.

(f) They alleged that the fuse box should have been replaced because the existing one was plastic but should have been non-combustible. The Respondent understood from the electrician who inspected in February 2022 that the fuse box would only require replacement if and when a new tenancy was entered into.

39. The Respondent eschewed the opportunity to make any representations as to his financial circumstances.

40. In the Tribunal's opinion an RRO of the full amount of £7,200 for each Applicant is not proportionate to the Respondent's offence, bearing in mind the purpose of the legislative provisions and all the circumstances as set out above. Therefore, the Tribunal has decided to award a sum equivalent to 80% of the full amount, which comes to £5,760 for each Applicant.

Name: Judge Nicol **Date:** 20th December 2023

RIGHTS OF APPEAL

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

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

Appendix of relevant legislation

Housing Act 2004

Section 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.

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

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) 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.

(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–

(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 (8) is met.

(8) 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.

(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

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.