



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

**Case Reference** : LON/00AT/HMF/2022/0271

**Type of Hearing** : Remote - Video

**Property** : 47, Cardington Square, Hounslow,  
Middlesex TW4 6AJ

**Applicant** : Mr. Philip John Cleaver

**Representative** : Not represented

**Respondents** : Mr. Lakhbir Rana

**Representative** : Not represented

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

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

**Date and Venue of  
Hearing** : 17 October 2023 – remote video and  
6 December 2023 – paper determination

**Date of Decision** : 23 January 2024

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**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 Respondent to pay the Applicant the sum of £1,049.25.**
- (2) The Tribunal makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imburement by the Respondent of the fees of £300 paid by the Applicant in bringing this application. Payment is to be made within 28 days.**

## Reasons

### The Application

1. The Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”) for the period from 20 March 2022 to 20 June 2022 as set out in his application.
2. The application is signed by the Applicant and dated 27 November 2022 and so is in time. It alleges that the Respondent has committed an offence contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act”) - having control or management of an unlicensed House in Multiple Occupation (“HMO”).

### The Legal Background

3. The relevant legal provisions are partly set out in the Appendix to this decision.
4. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the 2004 Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
5. 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).
6. To be an HMO of any description the property must meet the standard test under section 254(2) of the 2004 Act. A building meets the standard test if it;
  - “(a) consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
  - (b) the living accommodation is occupied by persons who do not form a single household ...;
  - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
  - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
  - (e) rents are payable or other consideration is to be provided in respect of at least one of the those persons’ occupation of the living accommodation; and
  - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or

*the living accommodation is lacking in one or more basic amenities.”*

7. Paragraph 6 of Schedule 14 of the 2004 Act deals with the question of whether properties occupied by owner-occupiers are HMOs. When read with regulation 6(2) of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 the effect is that a property which is occupied only by an owner, members of their household and no more than 2 other people is not an HMO. An owner is defined as a person who has a freehold or a long leasehold interest in the property (para 6(a) of Schedule 14).
8. 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. By section 258(3)(b) a person is a member of the same family as another person if one of them is a relative of the other. Section 258(4) defines relative to mean “*parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin*”.
9. With regard to additional licensing, there was no dispute that the property was in the London Borough of Hounslow. In the course of the hearing the Respondent accepted that throughout the period in question the property was in an area which was subject to an additional licensing scheme which designated HMOs with 3 or more people in 2 or more households as requiring a licence.
10. An offence under section 72(1) can only be committed by a person who has control of or manages the property in question. The meaning of these terms is set out in section 263 of the 2004 Act as follows;
  - “(1) *In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*
  - (2) *In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.*
  - (3) *In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—*
    - (a) *receives (whether directly or through an agent or trustee) rents or other payments from—*
      - (i) *in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*
      - (ii) *in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of*

*the whole of the premises; or*  
(b) *would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;*  
*and includes, where those rents or other payments are received through another person as agent or trustee, that other person.*

11. 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 (section 72(5)).
12. By virtue of the decision of the Court of Appeal 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.
13. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.
14. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.
15. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

### **The Hearing**

16. The hearing was conducted remotely by video link. Both parties attended and neither was represented. Both gave oral evidence, which the Tribunal took into account.
17. The Tribunal had before it the following documents, which were all read and taken into account when reaching its decision;
  - (a) the Applicant's application form;
  - (b) a statement of case dated 18 May 2023 from the Applicant
  - (c) an indexed and paginated bundle of 39 pages from the Applicant, which included a link to a video which the Tribunal viewed (bundle A);
  - (d) an indexed and paginated bundle of 37 pages from the Respondent (bundle R);
18. In what follows references to documents in particular bundles will be by reference to the printed page numbers. References will bear the

prefix for each bundle set out above. Thus, for example, page 20 of the Respondent's bundle will be page R20.

19. During the course of the hearing it became clear for the first time that the Respondent's case depended on his assertion that one of the occupiers of the property during the period in question was a family member of his. He claimed that the man named as Alvis on the cleaning rota (see page A27) was a Mr. Alvis Singh Siddhu who is his cousin. This was the first time this had been suggested and there was no documentary evidence to support this contention. The Tribunal therefore decided that, having heard the evidence of the parties on all other aspects of the case, it was in the interests of justice to adjourn the hearing in order to allow the Respondent to provide documentary evidence in support of this contention. Further directions were issued requiring the Respondent to provide any documentary evidence on which he wished to rely by 14 November 2023 and allowing the Applicant until 28 November to provide submissions in reply. The case was then listed for a final determination on the papers on 6 December 2023.
20. In the event the only additional documentation received from the Respondent was an e-mail dated 13 November 2023 which stated that he had contacted Mr. Alvis Singh Siddhu who had stated that he was unwilling to share any of his personal details.

### **Has an Offence Been Committed?**

#### **The Applicants' Case**

21. The Applicant's case was a simple one. He rented a room in the property from the Respondent and that the occupiers of the property shared a kitchen and bathroom. He argued that the property was an HMO as he was living as a lodger with the Respondent and two others. His case was that as there were 3 people in addition to the Respondent in occupation the property needed an additional licence under the Hounslow scheme and that no such licence existed.

#### **The Respondents' Case**

22. In the course of the hearing the Respondent accepted much of the Applicant's case. He accepted that the Applicant lived at the property as a lodger from 20 March to 20 June 2022. He accepted that the property was only used as a home. He accepted that Hounslow had an additional licensing scheme in place and that a licence would be required if he had 3 lodgers. He also accepted that he had not applied for a licence.
23. In his statement of case the Respondent argued that the property was not an HMO (page R10). The basis of this contention was that he always had a maximum of 2 lodgers staying with him. He stated that the only other occupiers were family members who did not pay him rent. He also relied on a letter from the London Borough of Hounslow dated 8 February 2023 (page R17) and an e-mail from them dated 2 February (page R19).

24. As explained above, it became clear during the course of the hearing that the Respondent's case was that he relied on the provisions in paragraph 6 of Schedule 14 of the 2004 Act ("paragraph 6") exempting owner-occupied properties from being HMOs. In effect, his case turned on whether or not Mr. Alvis Singh Siddhu is his cousin.

#### The Tribunal's Decision

25. The Tribunal was satisfied on the basis of the Applicant's evidence and the admissions made by the Respondent that throughout the period in question the Applicant was living as a lodger at the property and that the Respondent was his immediate landlord. It was also accepted by the Respondent that rent was paid to him by the Applicant. It follows that there was no doubt that the Respondent was a person having control of the property as defined in section 263(1) of the 2004 Act.
26. The Respondent also accepted that throughout the period there were four people actually living in the property. These were himself, the Applicant, a person known as Yousef, who it was accepted was a lodger, and Alvis.
27. Therefore the only real question for the Tribunal to determine was whether or not Alvis was the Respondent's cousin. If not, then the property was an HMO.
28. The Tribunal found the Respondent's oral evidence about his relationship with Alvis equivocal. When first asked what the relationship between them was his reply was;  
*"his mother is my mother's cousin"*  
When the Tribunal suggested to him that this did not make him his own cousin, he then said that Alvis was the child of his mother's sister. So, on one hand he was saying that his own mother and Alvis' mother were sisters, whereas initially he had said that his own mother and Alvis' mother were cousins.
29. Added to this, there was a complete failure to provide any further evidence to support his contention. Even if Alvis himself were not prepared to assist, the Tribunal would have expected the Respondent to be able to provide official documentation and/or witness statements from other family members to support his case, but he had not done so.
30. Taking the evidence as a whole, the Tribunal were satisfied that Alvis was not the Respondent's cousin, as he claimed.
31. In addition, though the matter was not raised by the parties, the Tribunal noted that the evidence would appear to show that the Respondent could not rely on the exemption in paragraph 6 in any event. That exemption applies only to those who have a freehold interest in the property or a leasehold interest of more than 21 years (paragraph 6(a)). The land registry evidence provided by the Applicant shows that the registered proprietor of the freehold interest in the

property is Rupinder Kaur Rana, and there appear to be no registered leasehold interests. The Respondent's name is Lakhbir Rana, which is different from that of the registered proprietor, and the registered proprietor's name also appears to be that of a woman. It seems doubtful, therefore, whether the Respondent falls with the scope of paragraph 6(a) as there is nothing to show that he is either the freeholder or the holder of a long leasehold interest in the property.

32. It follows from this that the Tribunal was satisfied that the property was an HMO throughout the period in question. The documents relied on by the Respondent do not change that conclusion. They are dated after the period in question. Also, they merely repeat the Respondent's own assertion that he only has two tenants. They do not provide independent evidence of how many tenants were in occupation whilst the Applicant was living there.
33. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not. There was insufficient evidence before the Tribunal to raise such a defence.
34. It follows therefore, that the Tribunal was satisfied that throughout the period claimed the Respondent was guilty of an offence contrary to section 72(1) of the 2004 Act.

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

35. There was no doubt that the Respondent was the Applicant's immediate landlord – as is made clear in the tenancy agreement (page A13). It follows that the Tribunal has jurisdiction to make an order against him

#### **Amount of Order**

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

#### **Rent**

37. In his oral evidence the Respondent accepted that during the time he was living at the property the Applicant paid him a total of £1,499 in rent. This is consistent with the evidence of payments at pages A16 to 21. It follows that this is the maximum amount which may be awarded.

#### **Utilities**

38. The terms of the Applicant's tenancy were that the rent included all household bills (page A13). Some documentary evidence was provided by the Respondent in respect of the costs of those bills, but not for the whole of the period. Following the approach in Acheampong the

Tribunal therefore set out to make an informed estimate based on the evidence available to it.

39. In reaching its conclusions the Tribunal bore in mind the following facts which it found based on the evidence before it. The property contains four bedrooms, one of which was occupied by the Respondent, who said that his room was very small. There is gas central heating and hot water, with a radiator in every room. The kitchen has a gas hob and an electric oven. The Respondent's oral evidence was that the average total cost of gas and electricity for the whole house was £190 or £200 per month. At pages R29 and 30 there are statements from Bulb showing that in the months of March, April and May 2022 the total energy costs were £194.47, £238.87 and £198.24 respectively. The period in question was that from 20 March to 20 June. Given that it is likely that much of the energy costs would be incurred in providing heating, the Tribunal would expect the total cost for June to be considerably less. It concluded that the likely total cost for the period in question would be about £500. The Tribunal also bore in mind the relative size of the Applicant's room and concluded that his appropriate share of the utilities cost for the period was £100.
40. The Tribunal considered that no deductions were appropriate in respect of water or broadband as there was no suggestion that these services were metered and so it was not possible to ascertain what expenditure was dependent on the Applicant's consumption and what was payable in any event.
41. Therefore, the total maximum award which the Tribunal could make is  $£1,499 - £100 = £1,399$ .

#### Seriousness of Offence

42. As required by the approach recommended in the case of Acheamong 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.
43. 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. This alone would justify a reduction of 10%.
44. The Tribunal also concluded that this was not a serious offence of its kind. Firstly, it considered the impact on the tenants of the absence of a licence. This was not a case where the Applicant had shown that there were widespread safety risks at the property, though he alleged that there were no smoke detectors in the property, something which was denied by the Respondent.
45. The Tribunal also considered the fact that there was no evidence that the Respondent rented out any other properties. This was a simple case



of a resident landlord renting to lodgers, albeit in excess of the number for which a licence is required.

46. Bearing these factors in mind the Tribunal concluded that the total amount payable should be reduced further. It considered that the reduction should be of a further 15%, meaning a reduction to 75% of the maximum.

Section 44(4)

47. 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.
48. There were allegations of poor conduct by both parties in this case. The case put forward by the Respondent was that the Applicant was frequently in breach of a requirement in his agreement which prohibited the consumption of alcohol on the premises (clause 15 at page A14). Not only that, but he alleged that the Applicant was often found drunk on the premises. He further alleged that the Applicant's behaviour amounted to a nuisance in the property. He also alleged that the Applicant made the kitchen and bathroom dirty and did not clean up after himself. The Respondent claimed that the Applicant was often drunk and disorderly, including sitting outside in the front garden shouting at passers-by. He also claimed that the Applicant broke the toilet seat at the property, frequently left the gas on in the kitchen thereby causing a safety risk, damaged a mattress with urine, and refused to return the keys.
49. Whilst the Applicant accepted that he would drink a couple of beers in his own room once or twice a week he denied the allegations of poor behaviour made by the Respondent.
50. There was, in effect, a direct evidential conflict between the parties about this aspect of the case. In resolving that conflict, the Tribunal bore in mind the following. Firstly, in his oral evidence the Respondent said that he had seen the Applicant shouting and being loud and aggressive on the CCTV which he had installed at the property. However, no evidence of this was provided. The Tribunal considered it likely that if the Applicant were indeed regularly drunk and disorderly at the property and causing the degree of nuisance complained of, and there was CCTV installed, it would have been possible to provide the Tribunal with direct evidence of that behaviour, but this had not happened. Whilst the Respondent had provided some still images of the Applicant (pages R32 to R35) these did not substantiate the allegations made by him.
51. In addition, despite the assertion made by the Respondent that the Applicant's behaviour was disruptive and a nuisance to the occupiers of the property, there was no evidence from any of the other people living there to confirm this.

52. In addition, the Tribunal had before it a number of What's App messages sent between the parties (pages A23 to A30). These show that the two used What's App to communicate between them. What they show is that when the Applicant said that he would need to claim Housing Benefit the Respondent said that he did not accept benefit payments and gave him the option of leaving. This is not consistent with the Respondent's account that he was keen to get rid of the Applicant because of his bad behaviour. The What's App messages make no reference to poor behaviour and, on 28 May 2022, the Respondent even described the Applicant as a "*cool guy*". In his oral evidence he did not adequately explain how this was consistent with his account of the Applicant's poor behaviour. If the Applicant was guilty of bad behaviour the Tribunal would have expected the Respondent to have mentioned this in these messages and to have provided copies of them.
53. The Tribunal found that the Applicant's answers to questions were more persuasive than those given by the Respondent, whose evidence was at times equivocal and/or evasive and at times exaggerated. The Tribunal attached little weight to the witness statement of Mr. Mitesh Shah, who states that he is a close personal friend of the Respondent and is clearly not an impartial witness (page R15).
54. Taking the evidence as a whole the Tribunal was not satisfied that the Applicant was guilty of the drunken and disorderly behaviour alleged by the Respondent. The Applicant did however agree that he had breached the terms of his tenancy agreement, which at paragraph 15 had an absolute ban on consumption of alcohol.
55. The Applicant in his case complained that the Respondent had behaved in an intimidating manner and had given him 24 hours notice to leave. This conversation was recorded by the Applicant and was considered by the Tribunal.
56. Having considered the cases put forward by both parties in respect of the conduct of the other, the Tribunal concluded that there was no reason to further alter the proportion of the maximum amount which should be paid by the Respondent.
57. Finally, the Tribunal considered whether the Respondent would be able to pay any sum that the Tribunal may impose. It bore in mind that 75% of the maximum sum was £1,049.25. In his statement of case the Respondent stated that he was not working because of ill health. He did not state whether he was in receipt of any benefits in respect of this. He set out his outgoings, which totalled some £861 per month. However, on his own account he was letting the property to two lodgers at a total rent of at least £1,000 per month, which is more than enough to meet his outgoings. On this basis the Tribunal concluded that no further adjustment in the amount of the order was required in order to take account of the Respondent's financial circumstances.

58. Taking all this together the Tribunal concluded that no further change in the amount of the order was justified under section 44(4).
59. It follows, therefore, that the amount of the order payable by the Respondent to the Applicant is  $\pounds 1,399 \times 75\% = \pounds 1049.25$ .
60. The Tribunal also concluded that, given that the Applicant had succeeded in his application, it was just and equitable to make an order under rule 13(2) of the Rules for the re-imbusement of the fees paid for bringing the Application.

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

**Date:** 12 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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers

3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **Section 41 Application for rent repayment order**

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if —
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
- the offence relates to housing in the authority's area, and
  - the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **Section 43 Making of rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- section 44 (where the application is made by a tenant);
  - section 45 (where the application is made by a local housing authority);
  - section 46 (in certain cases where the landlord has been convicted etc).

#### **Section 44 Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

***If the order is made on the ground that the landlord has committed***      ***the amount must relate to rent paid by the tenant in respect of***

an offence mentioned in [row 1 or 2 of the table in section 40\(3\)](#)      the period of 12 months ending with the date of the offence

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

## **Section 52 Interpretation of Chapter**

(1) In this Chapter—

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

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

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

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

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