FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/HMF/2023/0202**
Property	**:**	**Flat 11 , 55 Ebury Street, London SW1W 0PA**
Applicant	**:**	**Andrew Niblett, Nick Caddick, William French & Robin Wisloch**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Rafik Asadova & Sevda Asadova**
Representative	**:**	**Mr Michael Field of Counsel & Ms Gulsum Asadov**
Type of Application	**:**	**Application of rent repayment order by the tenant**
Tribunal Members	**:**	**Judge Dutton** **Mr S Wheeler MCIEH, CEnvH**
Date of Hearing	**:**	**1st February 2024**
Date of Decision	**:**	**21 February 2024**

DECISION

DECISION

1. The Tribunal determines that a rent repayment order should be made in this case in the sum of £20,700. This represents the period as set out on the tenants' claim for rent from 1st October 2021 to 30th September 2022 and represents 50% of the sum claimed. The amount due should be paid within 35 days of the date of this decision.

2. We also order reimbursement to the Applicants through Justice for Tenants of the application and hearing fee in the sum of £300.

BACKGROUND

1. On 26th July 2023 the named Applicants through their representatives Justice for Tenants made an application to this Tribunal for a rent repayment order in respect of their occupancy of Flat 11, 55 Ebury Street, London SW1W 0PA (the Property). The Respondents to the application are Mrs Rafik Asadov also known as Rafik Asadova on the tenancy agreement and his wife Sevda Asadova.

2. The Respondents are the freehold owners of the Property.

3. The Applicants occupy under the terms of an assured shorthold agreement dated 16th April 2021 for the term of two years from 1st May 2021 to 30th April 2023 at a weekly rent of £800 and subject to a deposit of £4,000. The Property is a four-bedroom self-contained flat in a building comprising six stories. There are shared facilities.

4. The application states that in the Applicants' view the Respondent has committed an offence under section 72(1) the Housing Act 2004 of having control or management of an unlicensed HMO. The application is made under s41 of The Housing and Planning Act 2016. The Property is situated in an additional licensing area designated as such by the City of Westminster and details of the licensing scheme were provided. It seems it came into force on 30th August 2021 thus after the agreement had been entered into and shall cease to have effect on 31st August 2026.

5. The total sum claimed by the Applicants is as set out in exhibit D at page 98 of the bundle in the sum of £41,442.04. It is appropriate to record at this stage that the mathematics of the sum claimed is not disputed by the Respondents.

6. Directions were first issued in this case on 6th September 2023 and amended on 18th October 2023 it would seem to change Mr Asadova's surname. At the hearing, however, we were told that it should be Mr Asadov as that represented the male version of the surname.

7. We were provided with a number of documents by the parties. The Applicants provided a bundle running to 191 pages, which contained details of the alleged offence, information relating to their occupancy and witness statements from the four of them. We also had a copy of the tenancy agreement and a licence to sublet, which was required as well as proof of payment. In the Respondents' bundle we were provided with a statement of case and witness statements from Gulsum Asadova and Phoebe Neguerloes who was the Property Manager. There

were further exhibits provided giving details of repairs that had been carried out to the Property, inventory check-ins and Property condition report as well as various authorities to which we will refer to as necessary during the course of this decision.

8. In response to the Respondents' statement of reasons to oppose the application, the Applicants filed their own reply to this running to some 527 pages bulked out, it must be said, by duplicating a number of documents that were before us already. It did include a lengthy response running to some 9 pages and a second witness statements from Mr Niblett seeking to rebut some of the matters raised in the Respondents' statement of case.

9. At the hearing we invited Mr Field representing the Respondents to address us first. Having agreed that the claim was mathematically correct, he confirmed that it was necessary for us to concentrate upon whether or not the Respondent had a reasonable excuse defence to the application by virtue of section 72(5) which says as follows:

"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 (2), or
b. for permitting the person to occupy the house, or
c. for failing to comply with the condition as the case may be."

It is accepted in this case that no application for a licence was made but equally that the Respondents were not the subjects of a conviction.

10. In respect of the reasonable excuse defence put forward by Mr Field, we were referred to the case of Marigold & Others v Wells reference [2023]UKUT33(LC). We will deal with the authorities as one later in this decision.

11. We were told by Mr Field and that Mr Asadov was a Russian but was currently living in Turkey. We were told he barely spoke English and had little knowledge of the written language. His niece, Gulsum Asadova, was the contact between him and his managing agents Marsh & Parsons. We were provided with a copy of the letting agreement between Mr and Mrs Asadov and Marsh and Parsons which is dated November 2020 and contains under the heading Licences the following wording:- *"It is the landlord's responsibility to adhere to their Local Authorities licensing scheme. This may require that the landlord hold a licence prior to letting out their Property. The landlord cannot name the licence holder as Marsh & Parsons or any of its employees. Requirements under such schemes vary between each local authority and may not be predicated on the location of the Property and/or the tenants letting out of the Property. There are significant penalties if your Property fails to meet the licensing requirements. You hereby confirm to Marsh & Parsons that your Property is compliant with the Local Authority's requirements and you have applied for or already hold any licences necessary under the scheme. You agree to provide Marsh & Parsons with copies of any relevant licences (including applications or draft licences) upon request. As requirements under a scheme may vary between*

each local authority you also agree that you will inform Marsh & Parsons of any specific licensing restrictions."

12. It was put to us by Mr Field that the Respondents had in effect entrusted the management of the Property to their niece and that whilst living busy lives abroad felt that they had the support of their niece in this matter and that all was in order. He told us that the niece appeared not to have read the management agreement in detail and did not tell the uncle of the contents.

13. We then heard from Gulsum Asadova who had also made a witness statement, which was in the bundle before us. We will deal with her evidence and that of Ms Neguerloes from the managing agents before we recount that which was set out in the response prepared by Mr Field. Ms Asadova's witness statement was found at page 9 of the bundle and confirmed that she was the niece of Mr & Mrs Asadov. She confirmed that Mr Asadov was a businessman with various companies and was currently residing in Dubai but travelled regularly for business. She told us in evidence that he was fluent in Azerbaijan, Russian, Turkish and it appears Persian and had a very basic understanding of the English language. It appears that they own six properties in the UK, one of which is their UK residences, and another is for their children. There are four rental properties, three of which appear to be at 55 Ebury Street.

14. She told us that she had read the letting agreement but did not understand it to mean that she needed to obtain the licence from the Local Authority. She thought the licence referred to the actual letting as there was a requirement for the superior landlord to grant a licence before the letting could proceed. Indeed, a licence to sublet was included in the bundle before us.

15. She was asked about an email sent to her and others by Marsh & Parsons concerning the need to ensure that the Property was appropriately licensed. Her response was that she had assumed it to be in effect a 'round robin' and did not fully understand the implication. She told us that if she had been aware that a licence for the Property had been required, she would have worked with Marsh & Parsons and got them to deal with same.

16. She was then asked some questions by Mr James McGowan of Justice for Tenants in particular seeking details of her role as manager of the Property. She told us that she assists with anything that her uncle might require in England, which included the four letting properties. She was not paid. There was no agreement between them. She was just there she said to ensure all was 'ok'. She had no legal qualifications and was the mother of three children.

17. She told us that her uncle, as the landlord, was expected to sign off on anything of any moment, although he had no direct contact with Marsh & Parsons. She confirmed that her uncle and his wife also let Nos 32 and 33 at 55 Ebury Street. Asked about the apparent substantial income that her uncle and aunt made from the Property she agreed that it was as set out in the papers before us but that there were quite large outgoings, as well as service charge expenses in relation to each of the flats, which also had to be taken into account. She confirmed that she did authorise work but had never heard any problems with mould. The Property

had been freshly painted and what she could recall it was only from the checkout arrangements that the question of mould was raised.

18. We then heard from Phoebe Neguerloes, the former Property Manager with Marsh & Parsons. She told us that she had started with the company in September of 2021 and was the main point of contact in respect of the Property. In her witness statement she recalled that the Property was in generally good condition, although she had never personally visited it. Her view was that if matters needed to be dealt with then Gulsum Asadova usually dealt with them fairly quickly. She was not aware of any problems with the Applicants. She did deal with some specifics concerned tiling, coffee table, kitchen door, sliding window in the bedroom, kitchen drawer and the shower. Her responses are all set out in her witness statement, which we have noted.

19. In giving us evidence she was asked about the repair works that were carried out in the Property for which various invoices were attached. Asked about works from April 2022 onwards, she said she could not recall any specifics but if there were works required, then she considered that they would have continued to be done. She was satisfied that all certificates relevant to the Property were in place and her opinion was that the landlords were good landlords.

20. On questions from Mr McGowan, she confirmed that the company were no longer employed as managing agents as they ceased to act when the tenancies ended. She did confirm that it was then the practice of Marsh & Parsons not to become involved in licensing issues although that had changed in the more recent past.

21. We then turn to the response settled by Mr Field. There was confirmation that the Property did require a licence. However, the reasonable excuse argument was advanced. This was that the Respondents were unaware of the requirement to license the Property between October 2021 and September 2022 and relied on their managing agent to inform them of that need. They also relied heavily upon the assistance of their niece Ms Asadova. The submission went into the powers of the Tribunal to make a rent repayment order and gave more details to the reasonable excuse defence put forward. It was submitted that they were not professional landlords and relied heavily on the agent via their niece. Reference was made to various cases dealing with the question of reasonable excuse and we will refer to those in due course. To sum up, he indicated that we could be satisfied that in this case the reasonable excuse defence had been proved. He accepted that whilst having to be discharged by the defendants, such standard was on the balance of probabilities and not beyond reasonable doubt. As a further point he submitted that the law on licensing was complicated and not well known, simple or straightforward.

22. The submission then turned to the quantum of any rent repayment order, the contents of which we have noted, together also with the conduct of the parties.

23. After Mr Field had closed, we then heard from the Applicants. Mr Niblett had made a witness statement at page 19 of the bundle and the contents of same were read by us. In cross-examination by Mr Field, he confirmed that in his view the radiators had never worked properly and that the attempts to repair had started

in October 2021 and appeared to have finished at the end of November 2021. There were some questions about some rubbish removal. He suggested to us that the agent appeared to be somewhat uninterested and slow and commented also on the apparent condensation, which seemed to appear only in winter. He did mention that at the end of the tenancy agreement a request had been made by some of the applicants to see if they could replace any tenant who might have been leaving. However, he said that should not be taken to mean that the Property did not have its problems but to reflect the stressful nature of trying to find suitable alternative accommodation.

24. We then heard from Mr Caddick whose witness statement was at page 25 of the bundle. He immediately informed us that he was withdrawing any complaint about there not being the relevant certificates for gas, electric or energy performance accepting it seems that those had been made available. In respect of the radiator issues, it seemed that no complaints had been made by the tenants to the landlord after early December because at that time electric heaters had been provided.

25. We heard shortly from Mr French who said that he knew of people who wanted to rent the Property and the intention was that he would stay with others. He wanted to remain at the Property for the same reasons as Mr Niblett, namely the inconvenience of trying to find alternative accommodation.

26. We then invited Mr McGowan and Mr Field to make closing submissions. Mr McGowan went through some of the authorities in particular the Marigold case that we referred to above and Aytan v Moore. He pointed out that there was no contractual obligation on Marsh & Parsons to deal with the licensing issues and the niece had no contract either with them or with uncle and aunt. The Respondents let a number of properties and should have had a system in place to ensure that they complied with all licensing obligations. In his view, therefore, the reasonable excuse did not arise.

27. On the question of quantum, he confirmed that there were no utilities to take into account. However, what we should take into account was that the Respondents were professional landlords who should have had a system in place to ensure that the Property was compliant with the law. There was no evidence a licence had ever been obtained or indeed sought and that the commission of offence indicated a casual approach to the management of the Property. Further we had had no evidence directly from the uncle, which he thought showed a lack of attention.

28. He conceded that there were no previous convictions. We did not have details of the Respondents' financial circumstances but it would not appear that they were in a challenging situation. It was suggested that for much of the tenancy there was no adequate heating, and it was unreasonable to rely on his niece as there was no good reason to expect that she would inform him and be able to advise on his obligations. He concluded after questioning from the Tribunal that an order of 80% of the amount claimed would be reasonable.

29. Mr Field's response was that he was not suggesting that this was a failure by the agent and therefore that the Aytan case was not helpful. Marigold was, and we

needed to consider that. The landlord he said speaks four other languages but not English and relies on his niece who lives in the UK and has a good command of English. The Respondents had no direct contact with Marsh & Parsons save being copied in to emails but he did not reply directly to them as was accepted by Ms Neguerloes.

30. The management agreement he suggested was closely worded and that the niece had done her best to understand it. She was confused by reference to licensing thinking that meant the licence to sublet the Property, which had been done. We were reminded that at the time of the agreement the Property was not liable to be licensed. Further we were told that the Respondents were not aware of the circulating email from Marsh & Parsons about licensing requirements. We were asked to bear in mind that there was a lack of English and ignorance of the licensing arrangements had created in effect a perfect storm. The licensing requirements were not simple and straightforward, and they are often misunderstood. There was, therefore, he concluded a reasonable excuse defence available at section 72 and he should therefore be found not guilty of committing the offence of controlling or managing a house in multiple occupancy and no award should be made.

31. If, however, we were against him on that then he asked us to consider that the offence was at the lower end of the conduct for which a rent repayment order could be made. The managing agents made it clear that they thought that the Respondents were good landlords and the Respondents' documentation showed large amounts of money being spent on the Property both before and during the tenancy. There was he said clear indications of the niece acting quickly to resolve matters and there was no overt risk of safety to the tenants. Further, during the course of a tenancy agreement, which was to run for two years, there would inevitably be maintenance issues. As far as mould was concerned, there was no evidence that that was as a result of any conduct on the part of the landlord and even if we did not consider there was the reasonable excuse defence, there was still mitigation that could be taken into account. He put it to us that the Respondents had not deliberately avoided the law but it was ignorance perhaps let down by their niece who was assisting them. The repair issues were not significant and that if there was no reasonable excuse defence, there should still be a significant reduction in the amount of rent that was sought. Without nailing his colours to the mast, he referred to a couple of cases and thought that somewhere in the region of 25% of the amount was an appropriate sum.

32. Mr McGowan gave a quick response to this, again referring to the Marigold case and reliance on the agents. He told us that the only evidence we have of the Respondents' knowledge was from others and in his view there was no reasonable excuse, the arguments were perverse and the Respondents were in effect trying to pull the wool over our eyes.

FINDINGS

33. We will deal firstly with the Respondents' assertion that they have a defence to the offence under section 72(1) of the Act. That defence is that they have a reasonable excuse for not having licensed the Property. In the submission to us made by Mr Field the assertion was that the Respondents were not aware the

Property required a licence during the relevant period and that they had assumed the letting agent instructed to manage the Property would have informed them of the need to do so. They rely on the fact that they are not resident in the UK, are not professional landlords and that English is by no means their first language. They also rely upon the fact that their niece Ms Asadova, who clearly did understand English and who we were impressed with in giving her evidence, was there to provide them with the guidance that they needed.

34. Reference in the submission is made to the case of Aytan v Moore [2022]UKUT27(LC). This is not something advanced to any great degree by Mr Field. We refer to paragraph 40 of that decision where Judge Elizabeth Cook said this: *"We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform himself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad."*

35. If one then considers the authority of Marigold & Others v Wells, another Upper Tribunal case reference [2023]UKUT33LC. Here Mr Field relies to an extent on the further guidance given by Judge Martin Rodgers in which he quotes from the case of Perrin v HMRC [2018]UKUT156(TCC). At paragraph 48 the route that could be followed is set out. We do not need to repeat that here, but we have considered those three elements that have been set out at paragraph 48 of the decision. In addition, at paragraph 49 of the decision he refers to paragraph 82 of the Perrin case in which it is said as follows: *"…. It is 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 much less so. It would be a matter of judgement 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 requirements in question and for how long."*

36. We have borne in mind these cases and apply them to the facts as we find them to be in this case. That is that the Respondents had little or no contact with the managing agents, although did receive emails on occasion. However, they relied on their niece to deal with all aspects of the management of the Property. They were not fluent in English, indeed it is fair to say that of the languages Mr Asadov could speak, this ranked at best fifth and then only at a very basic level.

37. We also bear in mind that when this letting was entered into there was no requirement to license the Property, which came into effect during the course of the letting arrangement. All these matters have been borne in mind by us.

38. However, we reject the argument that they constitute a reasonable excuse. The Respondents are the leaseholders of at least four rental properties in the United Kingdom, three at 55 Ebury Street, which they rent out. The fact that they may

not be fluent in English is no excuse for not ensuring that they are up to date with the relevant legislation. They relied on their niece who confirmed with us that she was in her words 'just a mother of three children'. The letting agreement that they had with Marsh & Parsons specifically excludes the agents from dealing with licensing arrangements. We understand that Ms Asadova may have misunderstood this to be referring to the licence that was required of the head landlord. However, in our finding that does not obviate the need for there to have been proper enquiries made and for the landlord to keep up to date with the letting arrangements that appertain in England. We are satisfied on the balance of probabilities that the defence of reasonable excuse does not, for the reasons we have set out above apply.

39. That is not to say it may have some impact on the level of the rent repayment order that follows from our findings that the Respondents have beyond all reasonable doubt committed the offence of managing or being in control of an HMO without a licence.

40. On the question of quantum, the sums involved are not in dispute. They are as set out in exhibit D to the Applicants' statement £41,442.04. In assessing the level of the rent repayment order we bear in mind the guidance given by Judge Cook in Acheampong v Roman [2022]UKUT239. This requires us to first ascertain the whole of the rent for the relevant period. That is admitted at £41,442.04. The next is to ascertain any utilities. There are none. Next, the seriousness of the offence. As was said by Mr Field this is at the bottom end of the offences for which a rent repayment order can be made.

41. As to the seriousness, we have noted all that has been said by the Applicants. As is not uncommon with submissions from Justice for Tenants, there are allegations of breaches of sections (3), (4), (5), (6), (7) and (8) of the Managements of Houses in Multiple Occupation (England) Regulations 2006. In truth, it does not seem to us that there were breaches of items (3), (4), (5) or (6). Indeed, there is no suggestion that there was no gas or electricity in the Property nor that there was failure to maintain the common parts apart from some rather vague issue concerning a kitchen door. There are allegations relating to heating issues which were of concern. However, it is right to say the evidence we received from the Applicants was that once they had received some portable heating no further complaints were made about the central heating. This is probably from December of 2021, as this ties in with the last invoice from Warm Touch which is dated 26th November 2021 which says as follows: *"Engineer attended the above Property, power flushed the system, supplied and fitted 9 new radiator valves and lock shields, tested and left in good working order."* As far as we can tell from the evidence before us, the Applicants did not indicate to the Respondents that there was a continuing problem.

42. This to an extent goes on to the fourth element that we need to consider which is the conduct of the parties. We are not aware of any allegations that the tenants have acted in anything other than a good tenant-like manner. Ms Neguerloes indicated that she thought the landlords were good. Certainly, there is no doubt from the invoices that have been produced, that a fairly substantial sum of money was spent both before and during the early part of the tenancy agreement to deal with issues that were raised by the Applicants. A number of invoices are

included. We have noted also the surveys done before and after the letting. From the schedule of invoices running from 9th April 2021 through it would seem to 15th February 2022 all of which appear to relate to the Property, some £18,572 was spent on works. Admittedly some of this was before the tenants moved in but it is indicative of a Respondent, or perhaps we should say the Respondents' niece, taking responsibility for the upkeep of the subject premises. It is also apparent from the list of invoices relating not only to the Property but also it would seem to flats at No 32 and 33 at 55 Ebury Street, that there was a regular expenditure on various invoices to maintain the Properties.

43. Taking these matters in the round we have come to the conclusion that there is no conduct of the landlord that we need to take into account and of course there is no suggestion that they have been convicted of an offence as identified at section 45 of the Housing and Planning Act 2016.

44. We have little or no information as to the financial circumstances of the landlord. However, that fact that they own four properties that they rent in London as well as two others and that he is a businessman of some experience currently based in Turkey, leads us to the conclusion that the finances are not an issue in this case.

45. What then should be the level of the rent repayment order. In the case of Williams v Palmer & Others, reference [2021]UKUT0244, the then Chamber of the Presidents, the Mr. Justice Fancourt set out certain matters that we need to take into account. The first is that at paragraph 23 of that decision he indicated that this was not an offence for which there was a requirement for us to make the maximum repayment order. Credit must be given for the fact that the Respondents have not been convicted of any offence. It was suggested in the Williams case that a modest reduction of 20% was appropriate for this.

46. We bear that in mind. It is fair to say in our view that the Respondents are professional landlords owning four properties, three in the one building. Against that, however, is the fact that they do not live in the country, are not conversant with the English language and were relying on their niece to keep them abreast of matters. It is disappointing that the managing agents being aware that the landlord was letting a property that would fall within the additional licensing scheme, did not take steps to notify the niece that this was the case. As we have indicated above, however, that does not constitute a defence as it is behoven on any landlord to make sure they are aware of the licensing obligations. We would mention by reference to the Perrin case that it does not seem to us that the additional licensing scheme is anywhere near as complicated as tax issues that may arise nor indeed on the more mundane level for example, the right to manage arrangements set out under the Commonhold & Leasehold Reform Act 2002. In those circumstances, although referred to by Mr Field and in the case of Marigold & Others, it does not seem to us to apply to this matter.

47. There is mitigation as we have indicated above. We do not wish to appear conspicuously harsh in any finding that we make. The rent repayment order is intended to be a deterrent to landlords as to ensure that they meet the requirements of the legislation. It is not intended to compensate the tenants. They certainly have had a period of occupancy which did not seem to be too

traumatic in that they were seeking a possibility of an extension to the letting agreement at the end of the term.

48. Taking these matters into account and considering other authorities which have dealt with the level of quantum, we have come to the conclusion that a reduction of 50% is appropriate in the circumstances before us.

49. Accordingly, we order that there should be rent repayment order made in the sum of £20,700 which should be payable within 35 days. We would suggest that in the absence of any alternative arrangement that the money is paid to Justice for Tenants for them to distribute as appropriate between the four Applicants.

50. We consider that also having found in favour of the Applicants the Respondents should be required to refund the application and hearing fee in the sum of £300, which should be paid at the same time as the rent repayment order we have made.

Judge: Andrew Dutton

A A Dutton

Date: 21 February 2024

ANNEX – 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 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 to 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 (ie 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.

RELEVANT LEGISLATION

Housing Act 2004

72Offences 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.

Housing and Planning Act 2016

41Application 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.