



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

Case reference : LON/00AP/HMF/2022/0293

Property : 26B Imperial Road, London, N22 8DE

Applicant :
(1) Agnieszka Paulina Ujma
(2) Gregory Lewis
(3) Charlotte Valder

Representative : Mr McGowan (Justice for Tenants)

Respondent : Benedict Michael Pippet

Representative : Dominic Pippet

Type of application : Application for a rent repayment order
by the tenants: sections 40, 41, 43 and
44 of the Housing and Planning Act
2016

Tribunal members : Judge Tueje
Mr A Parkinson MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 13th March 2024

Date of decision : 12th April 2024

DECISION

In this determination, Mr Benedict Pippet is referred to as the Respondent, Mr Dominic Pippet is referred to as Mr Pippet.

Decisions of the Tribunal

- (1) The Tribunal find that the Respondent committed an offence under section 72(1) of the Housing Act 2004 without reasonable excuse.
- (2) The Tribunal makes the following rent repayment orders:
 - (i) £3,229.97 in favour of Ms Ujma for the period 11th July 2020 to 10th July 2022;
 - (ii) £2,768.55 in favour of Mr Lewis for the period 11th July 2020 to 10th July 2022; and
 - (iii) ££2,691 in favour of Ms Valder for the period 10th July 2021 to 4th April 2022.
- (3) The Tribunal determines the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (4) The reasons for the Tribunal's decision are given below.

The Application

1. The Tribunal received the application form on 20th December 2023. The application is for a rent repayment order, and is made under section 41 of the Housing and Planning Act 2016 by the Applicants, who were the tenants. The grounds for making the application were that the Respondent committed the offence of having control or managing an unlicensed HMO in breach of section 72(1) of the Housing Act 2004.
2. In the application form, the Applicants claim a repayment order representing 100% of the rent each paid during their occupation or the part of their occupation during which they say the offence was committed.
3. Therefore, Ms Ujma and Mr Lewis claimed for the period 11th July 2021 to 10th July 2022, while Ms Valder claimed for 11th July 2021 to 4th April 2022. At the hearing Mr McGowan accepted the period claimed in the application form was incorrect. The correct period being claimed for is 11th July 2021 to 3rd March 2022 for all Applicants, as stated in their skeleton argument dated 26th May 2023.

4. The application relates to the property known as 63B Imperial Road, London, N22 8DE (“the property”). It is a converted split-level flat comprising two rooms used as bedrooms on the lower level, with a kitchen-diner and a bathroom, and a bedroom and en-suite bathroom on the upper level.
5. The application is made against the Respondent, who is one of two joint long leaseholders of the property. The Applicants’ tenancy agreements state the Respondent was their immediate sole landlord.
6. The Tribunal’s directions order is dated 12th January 2023, subsequent to which the final hearing was listed on 30th May 2023. Mr Pippet attended the hearing on behalf of the Respondent, and requested an adjournment because the Respondent was on holiday. The adjournment was granted. The application was re-listed on 9th January 2024. The Respondent e-mailed the Tribunal on 5th January 2024 requesting an adjournment because Mr Pippet would be on jury service. Therefore it was re-listed for a final hearing on 13th March 2024. Mr Pippet requested a further adjournment because the Respondent had been injured in an accident; no medical evidence was provided regarding the accident or his injuries.
7. Taking into account the overriding objective to deal with cases justly and fairly, the procedural history, and in order to avoid further delay, the Tribunal considered it an appropriate adjustment to convert the hearing to a remote hearing. The parties agreed to the hearing being conducted remotely.

The Hearing

8. Mr McGowan of Justice for Tenants represented the Applicants at the hearing, which they all attended. They had prepared a 142-page bundle for the hearing and a 10-page skeleton argument.
9. The Respondent was represented by Mr Dominic Pippet, his brother, who had also managed the property. The Respondent provided a number of supporting documents, amongst them were the following:
 - 9.1 An unsigned witness statement from Mr Pippet;
 - 9.2 E-mails and WhatsApp exchanges between Mr Pippet and the Applicants;
 - 9.3 E-mails the Respondent exchanged with Haringey council regarding an HMO licence on 31st August 2022;
 - 9.4 An EICR report, a gas safety certificate dated 10th July 2020, and a Thames water bill relating to the property, showing the Respondent’s name; and

- 9.5 Bank statements for an account held jointly by the Respondent and Mr Pippet into which the Applicants paid their rent, and from which mortgage payments in respect of the property were paid out.
10. Before hearing any evidence we dealt with two procedural issues. Firstly, and despite Mr Pippet's objections, we gave permission to Mr Lewis to rely on his previously unsigned witness statement. The Respondent received the (unsigned) witness statement in good time, he was aware of the contents, and suffered no real prejudice as a result of it being unsigned. That defect was corrected by Mr Lewis having subsequently provided a signed statement of truth. At Mr Pippet's request, we allowed Mr Pippet to rely on his unsigned statement, and also allowed the Respondent to give evidence. The Applicants did not oppose this. It is also consistent with the overriding objective, particularly taking into account we are required to make findings as to whether an offence has been committed, it would be appropriate to hear from the Respondent.
11. The Tribunal heard evidence from all three Applicants, from the Respondent and Mr Pippet.
12. The parties did not request an inspection by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.

The Background

13. In a Public Notice Designation of an Area for Additional Licensing of Houses in Multiple Occupation dated 22nd February 2019, the London Borough of Haringey designated the whole borough as subject to additional licencing under section 56 of the Housing Act 2004. The designation came into force on 27th May 2019 and will expire on 26th May 2024
14. Paragraph 2 of the Public Notice states that the designation applies to all HMOs occupied under a tenancy or licence unless the HMO is subject to mandatory licensing or is subject to a statutory exemption.
15. The Tribunal was provided with a 12-month fixed term written tenancy agreement commencing 11th July 2020. The Respondent is named as the landlord, and the tenants are Ms Ujma, Mr Lewis, and one other person. The rent payable was £1,700 per calendar month, which the Applicants paid directly into a bank account held jointly by the Respondent and Mr Pippet. By clause 2.3.2 of the agreement, the tenants were responsible for utilities, although these payments were made via Mr Pippet, who collected the amounts payable from them. The Applicants complained he never provided copies of the utility bills, preventing them from checking what amount was due.
16. At the start of the tenancy, Mr Pippet e-mailed the tenants introducing himself as the landlord, informing them they should

contact him about any issues arising in connection with the property. We were provided with various messages exchanged about these issues, such as repairs, maintenance, paying for utilities. The Applicants confirm their day-to-day dealings regarding the property were with Mr Pippet, which is reflected in the exchanges between them.

17. In their witness statements, the Applicants make various complaints about conditions at the property, including:
 - 17.1 Mr Lewis says the dial to the gas hob was faulty, but Ms Ujma describes the hob as leaking gas;
 - 17.2 A section of the hallway carpet was old and frayed causing a trip hazard;
 - 17.3 That there was only one smoke alarm in the property;
 - 17.4 They were not told whether there was a carbon-monoxide detector in the property;
 - 17.5 That there were no fire-doors, fire extinguisher or fire blanket;
 - 17.6 Mould, damp and cracks to unspecified walls;
 - 17.7 Rats in the wall cavity;
 - 17.8 They never received an EICR nor a gas safety certificate when they renewed the tenancy in July 2021;
 - 17.9 A television cable hanging from the wall; and
 - 17.10 Mr Pippet was uncommunicative and did not respond to repairs or maintenance issues during the second year of the tenancy.
18. When the original tenancy expired, the Respondent renewed the tenancy agreement, with Ms Ujma and Mr Lewis as tenants. They were joined by Ms Valder who replaced the original third tenant, but she moved out on around 4th April 2022. During the period claimed for, Ms Ujma and Mr Lewis each paid £600 rent per calendar month, while Ms Valder paid £500 per month.
19. Ms Ujma and Mr Lewis wished to continue living at the property when the fixed term expired on 10th July 2022. As that date approached, they tried to find someone to replace Ms Valder. They found someone who was initially willing to move in, but that person changed their mind after being informed the tenancy agreement would be in their sole name. That stipulation was at Mr Pippet's request; his reasons are at paragraph 23 below. Ms Ujma and Mr Lewis were unable to find anyone else to replace Ms Valder, and they were unable to cover the rent between the two of them, so it was agreed between the parties that they would leave when the fixed term expired.
20. Amongst the documents the Respondent provided is an e-mail he sent to Haringey council on 31st August 2022 asking whether a letter he had received about HMO licensing was a standard letter being sent

to all properties. He added, 26 Imperial Road had been converted into two self-contained flats rented to a married couple on a single AST. Haringey responded the same day confirming it was a standard letter sent to properties that were or were believed to be HMOs. In cross-examination the Respondent confirmed he was aware Haringey had introduced additional licensing, but couldn't recall when he became aware. He also said prior to 31st August 2022 he had made other earlier enquiries of Haringey regarding a licence, he could not recall when those enquiries were made, nor was there written confirmation of those enquiries, but he recalls there were communications back and forth.

21. As part of his defence, the Respondent relies on his communications with Haringey, including the e-mail exchange on 31st August 2022, to argue there was a reasonable excuse for him believing the property did not require a licence.
22. Mr Pippet's undated witness statement includes the following:
 - 22.1 Confirmation that the Respondent is the legal proprietor of the property;
 - 22.2 The Respondent is named as the landlord on the Applicants' tenancy agreement;
 - 22.3 Mr Pippet is the beneficiary of the property;
 - 22.4 Mr Pippet has been diagnosed with bipolar disorder making him periodically too unwell to work; and
 - 22.5 It's accepted the property did not have a licence.
23. The Respondent denies being guilty of an offence under section 72(1) of the 2004 Act on two grounds. Firstly, he says he does not control or manage the property. He says Mr Pippet is the beneficiary, but states there is no written documentation regarding his beneficial interest. The Respondent acknowledges the property's legal title is registered in his name, explaining due to Mr Pippet's periodic ill-health, their family believed that would be best. As a result of this arrangement, the bank account the rent is paid into, and the mortgage is paid from, is a joint bank account, as required by the lenders. The Respondent adds that it's Mr Pippet who manages the tenancy. Mr Pippet's oral evidence to the Tribunal was broadly consistent with the Respondent's. He said he found out the property required a licence if it was let as an HMO when they tried to re-mortgage it. He explains after finding this out, that's why he requested the July 2022 renewal tenancy would be granted as a sole tenancy. He also asked the occupants to present themselves as living together as a family, for the same reason.
24. The Respondent had not provided any written documentation regarding his financial circumstances, but he answered questions from Mr MacGowan and from the Tribunal about this. He describes his occupation as a property consultant: he said he worked with

various property professionals in connection with property development, such as architects. However, he is currently not working due to an accident, and so had substantial debts. Therefore him, his wife and two children rely on his wife's income: she is a lawyer. He also said he had owns 3 buy-to-let properties, including the property, and estimated there was around £200,000 to £250,000 equity in the property.

Issues

25. In light of the above, the issues for the Tribunal to determine were as follows:
- 25.1 Whether the Respondent committed an offence under section 72(1) as a result of the following:
 - (i) being in control of or managing the property;
 - (ii) the property being an HMO;
 - (iii) Whether a licence was required for the property; and
 - (iv) If so, whether there was a licence for the property.
 - 25.2 If the above elements of the offence at paragraphs 25.1(i) to 25.1(iv) are met, during the period in which the offence was committed did the Respondent have a defence to the commission of the offence under section 72(4) and/or 72(5) of the 2004 Act?
 - 25.3 If an offence has been committed, the maximum amount of rent repayment order that can be ordered under section 44(3) of the 2016 Act.
 - 25.4 Whether the Respondent had been responsible for the cost of any utilities at the Property.
 - 25.5 The severity of the offence.
 - 25.6 Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the rent repayment order.

The Tribunal's Decision and Reasons

26. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence
27. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a

point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

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

Decision on the offence under section 72(1) Housing Act 2004

29. The Tribunal is satisfied beyond reasonable doubt that all elements of an offence under section 72(1) of the Housing Act 2004 have been satisfied, accordingly, we find the Respondent committed an offence under section 72(1) of the 2004 Act.
30. The Respondent has failed to show on a balance of probabilities that he had a reasonable excuse.

Reasons for the Decision regarding the offence under section 72(1)

31. We find the Respondent had control of the property as defined by section 263(1) of the Housing Act 2004, which states a person is in control of premises where they receive the rack-rent, including where they received it on their own account or as a trustee. the Respondent is named as the landlord in the tenancy agreement, on the gas safety certificate, the EICR report, and at least some of the utilities. He also had some involvement in the letting in, explaining that is why he contacted Haringey council about the additional licensing requirements in August 2022. Therefore, if he is the landlord, he received the rent on his own account when it was paid into the account held jointly by him and Mr Pippet. Therefore, while accepting Mr Pippet was largely responsible for dealing with day-to-day issues, we find the Respondent was in control of the property. It is common ground that the legal title to the property is registered in the Respondent's name. Accordingly, if, as the Respondent and Mr Pippet maintain, the latter is the beneficiary, the Respondent holds the property on trust for Mr Pippet. In which case when he received the rent it was as a trustee.
32. Furthermore, as the leasehold interest in the property is registered in the Respondent's name, and he receives the rent directly into his joint bank account, he is a person managing the property as defined by section 263(2) of the 2004 Act.
33. We also find that the property is an HMO as it meets the self-contained flat test at subsection 254(1)(b) of the 2004 Act. The property is a self-contained flat occupied by individuals who did not form a single household, each of whom paid rent, occupied the property as their only or main residence, two of them shared basic amenities, and the property was used solely for their occupation. Also,

during the period claimed for, the property was occupied by the three Applicants.

34. The Public Notice Designation of an Area for Additional Licensing of Houses in Multiple Occupation dated 22nd February 2019 states the designation applies to all HMOs within the borough except those subject to mandatory licensing or a statutory exception. The parties accept the property is situated in the borough, and no argument has been advanced claiming the exceptions apply. Accordingly, we find the property was subject to the additional licensing requirements contained in the Public Notice Designation.
35. The Applicants rely on an e-mail sent by Haringey council on 8th July 2022 stating a licence has never been granted or applied for in respect of the property. The Respondent does not challenge this. We therefore conclude a licence was not obtained.
36. Having reminded ourselves the Respondent needs to prove the defence of reasonable excuse on a balance of probabilities, we do not accept the Respondent's communications with Haringey council provide a reasonable excuse for the Respondent being control of or managing the property without a licence. His oral evidence was vague regarding his communications with Haringey prior to the 31st August 2022 e-mail exchange. For instance, he was unable to say when these took place and provided no information about what was discussed, beyond saying as a result he believed a licence was not required. Therefore, we have insufficient evidence to find those earlier communications provided a reasonable excuse.
37. The Respondent's e-mail sent on 31st August did not ask whether a licence was required for the property. The e-mail described the occupants as a married couple, and asked whether an earlier letter regarding licensing was a standard letter. Unsurprisingly, Haringey's response simply answered the question asked, confirming its letter was a standard letter, without any further advice or comment about whether the property required a licence. Furthermore, the Respondent's description of the property's occupants as a couple did not reflect the household composition when the Applicants occupied the property. Therefore, it would not have been reasonable to rely on Haringey's response as excusing his failure to apply for a licence when the Applicants were in occupation.

Amount of the Rent Repayment Order

38. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determine the amount of the rent repayment order, that approach is summarised as follows:

- 38.1 Ascertain the whole of the rent for the relevant period;
- 38.2 Subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
- 38.3 Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and
- 38.4 Consider whether any deduction from, or addition to, that figure should be made pursuant to section 44(4) of the 2016 Act in the light of the parties' conduct, the landlord's financial circumstances and whether the landlord has previously been convicted of an offence to which Chapter 4 of the 2016 Act applies.
39. We have adopted the approach recommended in *Acheampong v Roman and others* in reaching our decision as to the amount of the rent repayment order.
40. In the application form the Applicants are seeking repayment of the totality of the rent they paid during the period in which the offence was committed, being their respective shares as set out at paragraph 18 above. However, in closing, Mr McGowan argued any award should not be less than 80% of the rent paid during that period.
41. In fixing the appropriate sum the Tribunal had regard to *Acheampong v Roman and others* and the decision in *Hallett v Parker [2022] UKUT 165 (LC)*. We have also taken into account that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of the licensing system and to deter evasion.
42. We find the period of the offence was 11th July 2021 to 3rd March 2022, being a period of 7 months and 21 days. We also find during that period Ms Ujma and Mr Lewis paid £4,615.25, while Ms Valder paid £3,845.21. These amounts would be the maximum amount of a rent repayment order made under section 44(3) of the 2016 Act.
43. Under the tenancy agreement, the rent was exclusive of bills. Furthermore, the Applicants paid for utilities separately, albeit they paid via Mr Pippet. Therefore, no element of the rent paid is to be deducted on the basis that it represents payment for utilities.
44. Regarding the seriousness of the offence in this application, namely being in control of or managing an unlicensed property, we find this is towards the lower end when compared to other offences for which a

rent repayment order may be made. However, we take into account that additional licensing is introduced where the local authority considers a significant proportion of HMOs are being managed ineffectively.

45. As to the Applicants' conduct, we accept Mr Pippet's complaint that Mr Lewis's rent was paid late on around 10 occasions: late payment of rent is supported by Mr Lewis's bank statements. While Mr Lewis said Mr Pippet agreed to the late payment, we accept Mr Pippet's evidence that he did so reluctantly, having no real choice when Mr Lewis asked for more time to pay the rent. Mr Pippet complained about Ms Ujma's rent being late, but that was an isolated incident.
46. As to the Respondent's conduct in respect of the offence, we take into account it is a landlord's responsibility to be familiar with any relevant legal requirements. Furthermore, the Respondent is a property consultant who works with property professionals, so he ought to have been aware an additional licence was required.
47. We also note the Applicants' evidence that there were no fire extinguishers or fire blankets in the property was unchallenged. We take into account the importance of fire safety, and consider these deficiencies are serious.
48. The gas safety certificate provided seems to indicate there was no carbon monoxide detector in the property. And another deficiency was the failure to display or provide a gas safety certificate during the tenancy commencing 11th July 2021. Mr Pippet accepted he omitted to provide a copy to the Applicants, but claims he had obtained gas safety certificate for this period (a copy was not provided to the Tribunal). However, the requirement is to provide or display the certificate not merely obtain one.
49. We consider it appropriate that the amount of the rent repayment order is increased to reflect these deficiencies.
50. Mr Pippet's request that the 2022 renewal tenancy be a sole tenancy with the occupants presenting themselves as a family unit was an inappropriate response to finding out an additional licence was required. However, there is no evidence that the Respondent was involved or aware Mr Pippet had made the request.
51. In exercising our discretion to determine an appropriate amount, we have also considered the Respondent's conduct more generally. The Applicants complain about a failure to carry out various repairs and attend to related matters in a timely manner. We have found the Respondent was in control of or managed the property, but that Mr Pippet dealt with day-to-day repairs and maintenance. Nonetheless, whether or not the Applicants' complaints are made out, is relevant to

establish if the Respondent acted reasonably by leaving these matters to his brother to deal with. This means it's also relevant whether Mr Pippet dealt with these matters appropriately.

52. Therefore, as to the main complaints made by the Applicants, we find as follows:

52.1 Mr Pippet accepted the dial to the gas hob was "fidgety". We therefore accept Mr Lewis's evidence that it required replacement, but we do not find that gas was leaking as Ms Ujma claimed. From her cross examination she seems to have assumed gas would leak from a faulty dial, but there is no evidence to support that assumption. We do not consider this warrants any increase in the amount of the rent repayment order.

52.2 Mr Pippet accepted the photographic evidence showing the area where the hallway carpet had lifted, and he agreed this had not been addressed. In our judgment, this represented a trip hazard in a high-traffic area, therefore justifying a modest reflection in the amount of the award.

52.3 We accept Mr Pippet's evidence that there were fire doors fitted at the property, which he said Haringey's building control had required when approving the conversion into flats.

52.4 The contemporaneous exchanges between the parties which were provided to the Tribunal give no indication of problems with mould, dampness or cracks to walls.

52.5 The complaint about rats in the wall cavity seems to be based on noises emanating from the wall cavity. We consider that on its own, is insufficient evidence to find there were rats in the wall cavity.

52.6 Ms Ujma complained that Mr Pippet failed to remove a television cable coming out of the wall. We do not find the presence of a television cable to be problematic.

53. Based on the WhatsApp messages provided, repairs and maintenance issues were generally dealt with in a timely and appropriate manner. However, the hallway carpet is an exception.

54. Furthermore, from the photographs of the property provided, we consider the condition of the property was satisfactory. We also note two of the Applicants renewed the tenancy in July 2021, and had it not been for the difficulty finding a third sharer, they would also have renewed in July 2022. This suggest they found the property's condition to be satisfactory.

55. We agree with the Applicants that they should have been provided with the utility bills that Mr Pippet had requested payment for. However, Ms Ujma's oral evidence was she believed they collectively paid around £70 per month, which we consider to be reasonable.
56. Mr Pippet provided a bank statement, we had no documentary evidence regarding the Respondent's finances, but he provided some information during his oral evidence. He explained he had recently stopped working, and had substantial debts. He states his wife works as a lawyer, but provided no information about his wife's earnings, nor did he provide any information regarding income received from his buy-to-let properties. However, he told us there is up to £250,000 equity in the property. Based on the information provided, there is insufficient evidence to justify reducing the amount of the rent repayment order based on the Respondent's financial circumstances.
57. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that we consider should be made in light of factors to which we must have regard under section 44(4) of the 2016 Act, we make a rent repayment order against the Respondent in the total sum of £8,690.16, consisting of the following:
- 57.1 £ 3,229.97, being 70% to Ms Ujma for the period 11th July 2021 to 3rd March 2022;
- 57.2 £2,768.55, being 60% to Mr Lewis for the period 11th July 2021 to 3rd March 2022; and
- 57.3 £2,691, representing 70% in favour of Ms Valder for the period 10th July 2021 to 3rd March 2022.
58. Mr Lewis's reward has been reduced due to his repeatedly late rent payments (see paragraph 45 above).
59. The Tribunal would remind the parties that it does not have the power to order the payment of the rent repayment order. It can only determine the amount of the rent repayment order.

Name: Judge Tueje

Date: 12th April 2024

Rights of appeal

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

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

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

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

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

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

Appendix of Relevant Legislation Housing Act 2004

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.

(8) 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.

(9) 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.

(10) 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).

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
- (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

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

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (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.

43 Making of a rent repayment order

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

44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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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.