



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

Case Reference : **LON/00AN/HMF/2023/0255**
Property : **3 Gilstead Road, London, SW6 2LG (“the Property”)**
Applicants : **(1) Louis Brosnan
(2) Thomas Pye
(3) Carla Mercier
(4) Irene Saiz Briones
(5) Thomas Haward
(6) Jack Gibson**
Representative : **Justice for Tenants
(Ref : 27100 Mr Cameron Nielson)**
Respondent : **J&K Holdings London Ltd**
Representative : **Ms Eleanor Vickery (counsel), instructed
by Gisby Harrison solicitors**
Type of Application : **Application for a rent repayment order by
tenants**
Tribunal : **Judge Foskett, Mr A Parkinson MRICS**
**Date and Venue of:
Hearing** : **10 May 2024 (10 Alfred Place – in person)**
Date of Decision : **26 June 2024**

DECISION

- (1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay £13,385.34 to the Applicants, to be paid to as to one-sixth to Ms Saiz Briones and five-sixths to Mr Brosnan (who paid rent for himself and on behalf of the 4 other Applicants) for Mr Brosnan to split *pro rata* in accordance with the rent paid.**
- (2) The Tribunal makes an order that the Respondent is to reimburse the fee of £300 paid by the Applicants in bringing this application.**
- (3) Payment under paragraphs (1)-(2) above is to be made within 28 days of this Decision being issued to the parties by email.**

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 40 to 44 of the Housing and Planning Act 2016 (“the 2016 Act”). They seek an order in respect of the period from 21 November 2022 to 19 June 2023 in the total amount of £38,243.82.
 - (a) The Applicants contended at the hearing that the full sum of £38,243.82 (shown on pages 268 and 269 of their e-bundle) ought to be paid back to them (ie the period starting on 21 November 2022 to 19 June 2023 inclusive, which is 211 days).¹ In written closing submissions filed after the hearing, the Applicants contended that an award of 85% of the rent claimed was appropriate and, in written reply submissions, contended that 90% would be appropriate.
 - (b) The Respondent contended that the relevant rent was for 22 November 2022 to 19 June 2023 (inclusive), ie 210 days, and that the total rent payable during the period was £37,972.60 and has offered on an open basis to pay to the Applicants 25% of the relevant rent as a RRO, ie £9,493.15. That figure was repeated at the hearing and in written closing submissions.
2. The application was made in November 2023.² It alleges that the Respondents have committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) – having control or management of an unlicensed House in Multiple Occupation (“HMO”).
3. The Applicants are 6 university friends who shared the Property from September 2022³ as assured shorthold tenants under a tenancy agreement dated 31 August 2022.
4. The Respondent is the freeholder of the Property (see page 326 of the Applicants’ bundle).

Procedural Background

5. Directions were first given by Judge Tagliavini on 5 December 2023 (and certain deadlines in those Directions were amended on 2 February 2024). The Directions contained an Annexe which set out the issues that the Tribunal would consider on its final determination, namely:

¹ The Tribunal’s calculation is that the period of admitted breach is 211 days and, as the rent is payable monthly, the Tribunal has taken six full months’ rent within the breach period and then used a pro rata figure for the number of days of November 2022 and June 2023 which fell within the breach period. That gives a figure of £38,243.84 but the 2p difference between this and the Applicants’ calculation is not worth dwelling on.

² The relevant period in respect of which a rent repayment order is sought ended on 19 June 2023 and accordingly the application needed to be made by 18 June 2024, which it was.

³ The Applicants moved in on slightly different dates, but all paid rent for the period of 1 September 2022 onwards. Ms Mercier (Bedroom 1), moved in on 1 September 2022, Mr Brosnan (Bedroom 2) on 2 September, Mr Haward (Bedroom 3) on 27 September 2022, Ms Saiz Briones (Bedroom 4) on 2 October 2022, Mr Pye (Bedroom 5) on 1 September 2022 and Mr Gibson (Bedroom 6) on 1 September 2022.

The issues for the tribunal to consider include:

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

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

- *Did the offence relate to housing that, at the time of the offence, was let to the tenant?*
- *Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?*
- *What is the applicable 12-month period?⁴*
- *What is the maximum amount that can be ordered under section 44(3) of the Act?*
- *What account must be taken of:*
 - The conduct of the landlord?*
 - The financial circumstances of the landlord?*
 - Whether the landlord has at any time been convicted of an offence shown above?*
 - The conduct of the tenant?*
 - Any other factors?*

6. The Directions also contained directions in relation to bundle preparation

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

and notes that the parties may wish to print out a copy of the e-bundles for use at the hearing.

7. Both parties have submitted a number of bundles and documents to the Tribunal, which the Tribunal has read and taken into account:
 - (1) A 478-page e-bundle from the Applicants;
 - (2) A 523-page e-bundle from the Respondent;
 - (3) A 4-page response to the Respondent's submissions from the Applicant;
 - (4) A 13-page witness statement and exhibit from Mr Brosnan for the Applicants dated 22 April 2024 (for which the Tribunal granted permission despite it being late);
 - (5) A skeleton argument from the Respondent and accompanying authorities bundle;
 - (6) Written closing submissions from both parties filed after the hearing (with the Tribunal's permission);
 - (7) Written reply closing submissions from both parties filed after the hearing (with the Tribunal's permission).

The Hearing

8. The hearing was listed for 10am and lasted a full day (without closing submissions) due to the volume of evidence adduced, in particular from all 6 Applicants. The Applicants were represented by Mr Neilson of Justice for Tenants and the Respondent by solicitors and Ms Vickery (counsel).
9. All 6 Applicants gave oral evidence, after confirming their witness statements as true, and were cross-examined by Ms Vickery. Mr Concannon gave oral evidence on behalf of the Respondent and was cross-examined by Ms Spencer. The Tribunal also asked a number of questions of all witnesses. The landlord herself, Ms Wang, gave no evidence, which the Tribunal found somewhat surprising and will return to later.

The factual situation

10. The Applicants' position was that the following matters constituted conduct relevant to the making of a RRO:
 - (1) The Respondent's response to four leaks, three of which occurred outside the relevant period (on 6 October 2022 – before the relevant period – and on 1 and 31 July 2023 – after the relevant period ended) but the main one which involved the collapse of the kitchen ceiling occurred within the relevant period on 16 June 2023;
 - (2) The cleanliness of the Property when the Applicants moved in;
 - (3) Breach of the HMO licence conditions by the re-letting of the second floor rear room after 21 November 2022;
 - (4) Failure to display the Respondent's name, address and telephone number in a prominent position in the Property.

Assessment of the witnesses

11. The Tribunal considers that all six Applicants told the truth in relation to the events on which they could give evidence. In large measure, their evidence on the facts entirely corresponded with the contemporaneous documents and that of the property manager, Mr Concannon, who gave evidence for the Respondent.
12. However, the Applicants gave a large amount of irrelevant evidence in writing (relating to the background to their relationship) and a significant amount of their personal opinions as to the reasonableness or otherwise of the Respondent's conduct in dealing with the issues which arose at the Property. This was unhelpful. The Tribunal does not criticize the Applicants for this because, until relatively late in the day, they were unrepresented. But by the time of the hearing, the parties were represented and the Tribunal considers that the hearing could have been significantly more focused had the parties made further efforts to work out what was really in issue and what evidence was relevant to those reasonably narrow points.
13. Mr Concannon, the property manager, gave evidence for the Respondent. The Tribunal found him to be honest and straightforward – he was realistic as to the practicalities of managing a property and dealing with issues and was careful to restrict his evidence to matters to which he could properly speak, thereby avoiding speculation.

The Legal Background

14. The relevant legal provisions are set out in the Appendix to this decision.
15. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. These include an offence under section 72(1) of the 2004 Act. Such an offence is committed if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed, save in prescribed circumstances which do not apply in this case.
16. 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).
17. By virtue of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 an HMO falls within the scope of mandatory licensing if it is occupied by 5 or more persons in two or more households.

18. In either case the building in question must be an HMO. By section 254 of the 2004 Act a building is an HMO if it meets the standard test under section 254(2).
19. 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;*
 - i. the living accommodation is occupied by persons who do not form a single household ...;*
 - ii. the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;*
 - iii. their occupation of the living accommodation constitutes the only use of that accommodation;*
 - iv. 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*
 - v. 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.”*
20. 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.
21. An offence under section 72(1) can only be committed by a person who has control of or manages an HMO. The meaning of these terms is set out in section 263 of the 2004 Act as follows;
- “(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*
 - (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.*
 - (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–*
 - (a) receives (whether directly or through an agent or trustee) rents or other payments from–*
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*
 - (ii) in the case of a house to which Part 3 applies (see*

section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;*

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

22. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it. It is also a defence under section 72(4)(b) of the Act if an application for a licence has been duly made.
23. An order may only be made under section 43 of the 2016 Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.
24. By virtue of the decision of the Supreme Court in the case of Rakusen v Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.
25. By section 44(2) of the 2016 Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period and any relevant award of Universal Credit paid in respect of the rent under the tenancy must be deducted.
26. Section 44(4) of the 2016 Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

Has an Offence Been Committed?

27. The Respondent admits that:
 - (1) It committed an offence under sections 72 and 95 of the Housing Act 2004 by operating an unlicensed HMO from 22 November 2022 to 19 June 2023;
 - (2) The Applicants were in occupation during that period and are therefore eligible for a RRO under section 43 of the Housing and

Planning Act 2016;

- (3) The Respondent is the person having control of and managing the Property within the terms of section 263 of the 2004 Act.

28. The Tribunal is satisfied beyond reasonable doubt:

- (1) for the reasons explained in the Respondent's skeleton argument that the relevant offence has been committed and that the Respondent is the personal having control of and managing the Property;
- (2) that on the evidence, as accepted by the Respondent, the Applicants were in occupation during the relevant period.

Jurisdiction to Make an Order

29. The Tribunal then went on to consider whether or not, in the light of the case of Rakusen, it had jurisdiction to make an order under section 43 of the 2016 Act. This required considering whether or not the Respondent was the Applicants' immediate landlord.

30. In determining this question, the Tribunal needed to look no further than the tenancy agreements of the Applicants. The AST provided to the Tribunal (Applicants' bundle at page 206) showed the landlord as J&K Holdings Ltd, which appears to be a typographical error for J&K Holdings London Ltd.

Reasonable excuse

31. The Respondent did not adduce any evidence as to reasonable excuse and admitted that the offence had been committed and the Applicants were in principle entitled to a RRO.

Amount of Order

32. 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 of UT Judge Cooke in the decision of Acheampong v Roman [2022] UKUT 239 (LC) at paragraph 20.

Rent

33. As set out at paragraph 1(a) above, the rent paid for the relevant period was £38,243.84. The Applicants' bundle contained redacted bank statements proving the payments made. No Applicant was in receipt of any benefits.

Utilities

34. That figure for rent given above did not include any payments for utilities which, on the evidence of both parties, were paid directly to the utilities

companies by the Applicants.

Seriousness of Offence

35. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence.
36. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. Whilst the Tribunal accepts that a failure to license is in no sense a trivial matter, nevertheless, it considered that a reduction is justified to reflect the relative seriousness of this when compared to other offences which can form the basis of a RRO.
37. The Tribunal accepted that the Respondent is not a full-time professional landlord, although she does own and let three other properties (at least one of which operates as a HMO) as well as the subject property. The Tribunal does not accept the submission of the Applicants that the Respondent is a professional landlord because she lets properties via a company – as far as Companies House shows, she is the sole director and shareholder and the operation is plainly a small one. However, the Respondent was clearly aware of the licensing requirements, having had a relevant license for the property both before and after the relevant period in this case. The Tribunal rejects the Applicants' submission that this was not put to Mr Concannon and that it should not make a finding in this regard. Mr Concannon is simply the property manager. The Respondent (who attended the hearing) did not give any evidence herself as to why no licence was held in the relevant period or what her awareness was as to the requirements – Ms Vickery submitted that it was a mistake but, in light of the lack of evidence from the Respondent, the Tribunal is not prepared to accept that as the explanation and it is prepared to find that the Respondent was aware of the licensing requirements and, in this regard, has failed to put forward evidence that mitigates the failure to licence.
38. The Tribunal bore in mind that the text messages and emails adduced indicated a broadly good relationship between the Applicants and the Respondent's managing agent during their period of occupation apart from in relation to the main leak. Although some minor issues were raised, it appears that the Property was generally in good condition and that minor issues were dealt with reasonably promptly.
39. To reflect the seriousness of the offence, the Tribunal considered that the starting point should be 30% of the rent.

Section 44(4)

40. 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, ie the conduct of the landlord and the tenant, the financial circumstances of

the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter applies.

41. The Tribunal was asked to take into account by the Applicants conduct falling outside the “relevant period” (22 November 2022-19 June 2023). Despite the Respondent’s submissions to the contrary, the Tribunal considers that the correct approach is that it is able to take into account conduct falling outside the “relevant period” when determining a RRO case, but that it must give the conduct appropriate weight – for example, if the conduct complained of within the relevant period was entirely different from and/or was a long time after previous misconduct complained of, it would very likely be entirely or largely irrelevant to the RRO case.⁵
42. The Applicants submitted that the Respondent’s conduct was poor.
43. The Tribunal finds that there was some poor conduct in relation to the main leak in the kitchen ceiling which took place on 16 June 2023 and was not fully repaired for some period of time (until late August 2023) during which time no arrangements were made to facilitate the safe and hygienic preparation of food, including partially as a result of some administrative failings on the part of the Respondent (page 466 of the Applicants’ e-bundle). However, it was not very serious, particularly bearing in mind the involvement of the Respondent’s insurers which slowed down the repair process. The Tribunal also notes that there were 3 other leaks during the period of the Applicants’ occupation of the Property – this suggests that the Property was perhaps not being kept in as good repair as it might be, but the leaks were minor and, in any event, were dealt with promptly (which the Applicants in fact accepted).
44. The Tribunal does not find any poor conduct on the part of the Respondent in relation to cleanliness on check-in. The Tribunal did not find the photographs in the check-in and check-out reports very helpful on this topic, despite the amount of time devoted to questions on them, because it is very difficult to see dust and dirt in photographs. However, the Tribunal notes that one of the Applicants’ parents raised certain issues shortly after the move-in date and that these were not re-raised (and no other issues were raised) following the attendance of cleaners. The Tribunal considers that further emails or messages would have been sent by one or more of the Applicants had they had genuine concerns at the time about the cleanliness of the Property.
45. The Tribunal does not find that there was any breach of the HMO conditions in relation to the sixth bedroom, in light of the correspondence with Hammersmith and Fulham Council which appears at pages 397-403 of the Respondent’s bundle. The correspondence is not in the clearest terms due to inconsistencies in the description of the bedrooms and no one was able to clarify matters at the hearing for the Tribunal, but it does appear that the Council recognizes that all 6 bedrooms are permitted to be

⁵ See Kowalek v Hassanein Ltd [2021] UKUT 143 (LC) at paragraph 38 and Awad v Hooley [2021] UKUT 0055 (LC) at paragraphs 34-36.

occupied as part of the HMO.

46. The Tribunal does not find any breach of Regulation 3 of The Licensing and Management of HMO and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 in relation to the display of the Respondent's contact details in the Property because the Applicants simply could not recall whether these were displayed or not.
47. The Respondent alleged poor conduct by the Applicants in relation to cleanliness on checkout, minor damage to Bedroom 5's ceiling and some bathroom wall tiles (which the Applicants accepted could be remedied from their deposit), leaving some items in the Property on checkout (which was done with the knowledge of the Property's managing agent and at the request of the new tenants), failure to replace lightbulbs and allowing water to leak into the kitchen from a bath overflow. The Tribunal does not find that the Applicants left the Property in any worse state than they found it on checkout. The points about the minor damage and the items remaining in the Property are irrelevant, given that the first has been dealt with under the deposit and the second was evidently not poor conduct by the Applicants. In relation to the alleged bath overflow, there is insufficient evidence to substantiate this allegation.
48. There was no evidence as to the Respondents' financial circumstances.
49. There was no evidence of the commission of any other offences by the Respondents.
50. In the view of the Tribunal, in the light of the conduct evaluated in this section of the Decision, a further adjustment of 5% in favour of the Applicants was justified.

Decision

51. The Tribunal therefore decided to make a rent repayment order against the Respondent for the sum of 35% of the total rent for the relevant period.
52. The Tribunal notes that the Respondent does not oppose the award of the re-imburement to the Applicants of the hearing fee/application fee of £300 and so makes an order in those terms, despite the fact that the Applicants were only partially successful.

Name: Judge Foskett,
Mr Antony Parkinson
MRICS

Date: 26 June 2024

RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
 - (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
 - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
 - (2) The conditions are—
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal)

- and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
- (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
- (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

Section 41 Application for rent repayment order

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

Section 43 Making of rent repayment order

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

Section 44 Amount of order: tenants

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

If the order is made on the ground the amount must relate to rent that the landlord has committed 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.