FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AT/HMF/2023/0291**
Property	**:**	**22 Chester Road, Hounslow, Middlesex TW4 6HX**
Applicants	**:**	**Cally Richardson Angelique Ajala Abigail Parkes**
Representative		**Justice for Tenants**
Respondent	**:**	**Gurcharan Singh Reyat**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol Mr S Wheeler MCIEH CEnvH**
Date and Venue of Hearing	**:**	**30th July 2024; 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**30th September 2024**

DECISION

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1. **The Respondent shall pay to the Applicants Rent Repayment Orders in the following amounts:**
   - **(a) Abigail Parkes: £4,275**
   - **(b) Cally Richardson: £4,972.50**
   - **(c) Angelique Ajala: £5,418.75**
2. **The Respondent shall also reimburse the Applicants their Tribunal fees totalling £500.**

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicants were tenants at 22 Chester Road, Hounslow, Middlesex TW4 6HX, a 3-storey 4-bedroom terraced house:

   (a) In Room 2, Ms Parkes from 20th January 2019 to October 2022;
   (b) In Room 3, Ms Richardson from 1st June 2021 to 15th March 2023;
   (c) In Room 4, Ms Ajala from 4th October 2021 to 4th April 2023.

2. The Respondent is the freehold owner of the property and was their landlord. He used Room 1 as a pied-a-terre, staying there from time to time.

3. The Applicants seek rent repayment orders ("RROs") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. The Tribunal issued directions on 22nd February 2024. There was a face-to-face hearing of the application at the Tribunal on 30th July 2024. The attendees were:

   - Two of the Applicants, Ms Parkes and Ms Ajala;
   - Mr Cameron Neilson, Justice for Tenants, representing the Applicants;
   - The Respondent;
   - Ms Leanne Buckley-Thomson, counsel for the Respondent; and
   - By remote video, Ms Amnpreet Kaur, witness for the Respondent.

5. The documents available to the Tribunal consisted of:

   - A bundle of 311 pages from the Applicants;
   - A bundle of 271 pages from the Respondent; An 18-page Response from the Applicants; and
   - A Skeleton Argument from Ms Buckley-Thomas.

The offence

6. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants alleged that the Respondent was guilty of having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

7. The local authority, the London Borough of Hounslow, designated its entire area for additional licensing of HMOs with effect from 1st August 2020 until 31st July 2025. It applies to HMOs occupied by three or more persons in two or more households.

8. The Respondent has accepted from the outset that his property met the definition of a HMO during the periods claimed by the Applicants and that he failed to licence it under Hounslow's additional licensing scheme

as he should have done. Further, as Ms Buckley-Thomas made clear, he does not suggest that he has a defence of reasonable excuse under section 72(5) of the 2004 Act. Hounslow imposed a penalty of £3,000 for this offence and breaches of the HMO Regulations, reduced to £1,800 for compliance during Hounslow's investigation and early payment, and the Respondent did not seek to challenge it.

9. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of managing and/or having control of the property when it was let as an HMO despite not being licensed.

Rent Repayment Order

10. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The Tribunal has a discretion not to exercise that power. However, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.

11. The RRO provisions have been considered by the Upper Tribunal (Lands Chamber) in a number of cases and it is necessary to look at the guidance they gave there. In *Parker v Waller* [2012] UKUT 301 (LC), amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 9. In *Parker v Waller* … the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.
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> 10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be "such amount as the tribunal considers reasonable in the circumstances". … With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):
>
> > "There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable."
>
> 11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. …
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> 12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting

point, which is unsurprising; this is a rent repayment order so we start with the rent.

13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

> I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. In cases where the landlord pays for utilities, as he did in *Parker v Waller,* there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

17. Section 249A of the 2016 Act enables the local housing authority to impose a financial penalty for a number of offences including the HMO licence offence, as an alternative to prosecution. A

landlord may therefore suffer either a criminal or a civil penalty in addition to a rent repayment order. …

18. The President deducted the fine from the rent in determining the amount of the rent repayment order; under the current statute, in the absence of the provision about reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.

19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. …

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

43. … "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 … is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.

50. I reject the argument … that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial

circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

13. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to provide guidance on how to calculate the RRO:

> 20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;
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> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
>
> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
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> d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

14. The Applicants seek RROs for the full amount of rent they paid at the property:

(a) Abigail Parkes: £6,300 for the period of 20th October 2021 to 19th October 2022.
(b) Cally Richardson: £7,230 for the period 1st December 2021 to 31st January 2023.
(c) Angelique Ajala: £7,825 for the period of 4th December 2021 to 3rd February 2023.

15. Ms Buckley-Thomson noted that the periods claimed for Cally Richardson and Angelique Ajala omit the rental months of October and November 2022 which would result in 11 months and 12 months of rent claimed respectively. She took no point in the context of these proceedings against the proposition that sums claimed do not need to relate to a continuous 12-month period. The Respondent further accepts that none of the Applicants received any benefits to pay for the rent and that they paid their rent in full during the claimed periods.

16. In relation to utilities, clause 9.8 of each of the Applicants' tenancies provided that the Respondent was liable pay all charges for gas,

electricity, water, sewerage services, broadband, television licence and council tax at the property. The Respondent provided bills for gas, electricity, water, phone bills and council tax. Ms Buckley-Thomson calculated that they totalled £102.73 per month per resident:

- Gas & electricity £186.79 per month
- Water £37.62 per month
- Phone £22.28 per month
- Council tax £164.26 per month

17. However, council tax is not a utility so it is not clear why it is included in this calculation. Taking council tax out reduces the monthly total to £246.69. As Ms Buckley-Thomson said, this needs to be divided between the 4 residents (the 3 Applicants and the Respondent): £61.67 each. For 12 months the figure for each Applicant is £740.04.

18. Further however, the instruction of the Upper Tribunal is to subtract any element of that sum that represents payment for utilities that only benefited the tenant. It cannot be assumed that the whole of the payment for utilities exclusively benefited the tenant:

(a) Landlords do not include such services in the rent out of charitable goodwill but for sound commercial reasons such as increasing the chances of achieving a letting, attracting and retaining desirable tenants, and maintaining control of the identity of suppliers to the property.
(b) Further, while the rent may be increased from what it would otherwise be if utility payments were not inclusive, there is no basis for assuming that the increase precisely matches those payments. It is possible that the rent increase exceeds the utility payments, thus earning the landlord a profit from including them in the rent. While that may seem improbable at the moment, given that gas and electricity prices have increased substantially, the tenancy agreements in this case were entered into before that happened.

19. The Upper Tribunal has also provided little guidance as to what its rationale is for making any deduction at all for utility payments. It cannot be that they do not count as rent because "rent" has a clearly defined meaning in the law of landlord and tenant, namely "the entire sum payable to the landlord in money" (see *Megarry on the Rent Acts*, 11th Ed at p.519 and *Hornsby v Maynard* [1925] 1 KB 514). *Woodfall: Landlord and Tenant* states at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord."

20. Judge Cooke's reasoning in paragraph 16 of *Vadamalayan v Stewart* suggests that, as a matter of fact, not law, the consumption of utilities is something that the landlord does not benefit from then. However, in addition to the points in paragraph 18 above, the same could be said of other matters, such as the provision of furnishings and some repairs or

improvements, but they are excluded from this category of deductions. The 2016 Act has no provision which suggests that payments made by a landlord should be deducted if they benefit the tenant beyond a certain degree. The Upper Tribunal in *Vadamalayan v Stewart* also made it clear that deducting a landlord's expenses was an approach to be confined to the period before the 2016 Act amended the law.

21. In the absence of a clear rationale from the Upper Tribunal for the deduction of utilities, and doing the best the Tribunal can with the figures, the Tribunal deducts £600 from each Applicant's claimed figure to reflect the utility payments.

22. The next step is to consider the seriousness of the offence relative both to the other offences for which RROs may be made and to other cases where the same offence was committed. In *Daff v Gyalui* [2023] UKUT 134 (LC) the Tribunal sought to rank the housing offences listed in section 40(3) of the 2016 Act by the maximum sanctions for each and general assertions, without reference to any further criteria or any evidence, as to how serious each offence is. The conclusion was that licensing offences were generally lesser than the use of violence for securing entry or eviction or harassment, although circumstances may vary significantly in individual cases.

23. The Applicants pointed to a number of matters which they asserted made this case more serious:

    (a) According to the Penalty Notice dated 9th June 2023 issued by Hounslow to the Respondent, as well as the failure to licence, there was a breach of the manager's duty to take safety measures under reg.5 of the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. This was on the basis of a Fire Risk Assessment which rated the property at "AMBER-Medium/Moderate" and identified required remedial works, including the installation of fire extinguishers, directional signage and closers to the fire doors throughout.
    (b) The Applicants alleged that there were further breaches of fire safety regulations, including a lack of fire doors, thumb locks on those doors or fire blankets. The Respondent accepted the point about the thumb locks but pointed to a fire risk assessment from March 2023 showing compliance with most of the fire safety requirements.
    (c) The Respondent failed to protect Ms Ajala's deposit in accordance with section 213 of the 2004 Act. The Respondent replied that this was an administrative oversight which was corrected as soon as he found out about it and that all other deposits were protected as required under the Act.
    (d) The Applicants alleged breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 including a broken garage handle door, a lack of firefighting equipment, and the installation of a security device which made the rear door difficult to open. The Respondent claimed he did not know about the garage door handle, despite being a frequent visitor to the property. He also refuted the

allegation about firefighting equipment – this contradicted Hounslow's reasons for the penalty which the Respondent did not challenge.

(e) The Applicants alleged, and the Respondent denied, a failure to inspect and test electrical installations and the placement of safety certification stickers only in March 2023 after he had been notified that he was in breach of his legal obligations.

(f) The Applicants alleged that the Respondent did not provide gas or electrical safety certificates, an energy performance certificate or a How to Rent Guide. The Respondent provided the gas safety certificates in his Tribunal bundle, having kept them in the water cupboard at the property, but did not assert that he had ever provided or showed them to the Applicants. Similarly, he had obtained an EPC but never showed it to the Applicants. He also produced an EICR certificate from after the Applicants left which showed the electrics to be in a satisfactory condition. In relation to the How to Rent Guide, he asserted that he did not see the point of providing it as he had no intention of evicting anyone.

(g) The Applicants alleged that the Respondent insisted on turning down the heating to an uncomfortably low temperature to save money. The Respondent replied that the Applicants set the thermostat too high.

(h) The Respondent entered the communal areas whenever he wanted to and without notice. Although this was not a breach of the covenant for quiet enjoyment as the Applicants alleged, he was living in a household of women who were not family or friends and the Applicants unsurprisingly said his behaviour made them feel unsafe. When the Applicants raised their concerns, the Respondent dismissed them and even suggested they could leave if they didn't like it.

(i) The Respondent had installed cameras to the front and rear of the property. The Applicants accepted that cameras could be used as security measures but the Respondent also used them to look at what the Applicants were doing, for example making an inappropriate comment about someone who accompanied one of the Applicants when she viewed the property and using recordings to check on a mistaken neighbour complaint about a party instead of just asking the Applicants. When the Tribunal asked the Respondent whether he complied with data protection requirements in relation to the cameras, it had clearly never even crossed his mind to do so.

(j) Although it was the Respondent's obligation under reg.7 of the Management of Houses in Multiple Occupation (England) Regulations 2006 to keep the communal areas clean, he tried to impose a cleaning rota.

24. The Respondent countered in his Statement of Case that "the offence and punishment for it are minor matters when compared to the types of offences and punishments that can lead to applications for Rent Repayment Orders." That would appear to be a significant mis-reading of the judgment in *Daff v Gyalui* (paragraph 22 above).

25. It is important to understand why a failure to licence is serious, even if it may be thought lower in a hierarchy of some criminal offences. In *Rogers v Islington* LBC (2000) 32 HLR 138 at 140, Nourse LJ quoted,

with approval, a passage from the Encyclopaedia of Housing Law and Practice:

> … Since the first controls were introduced it has been recognised that HMOs represent a particular housing problem, and the further powers included in this Part of the Act are a recognition that the problem still continues. It is currently estimated that there are about 638,000 HMOs in England and Wales. According to the English House Condition Survey in 1993, four out of ten HMOs were unfit for human habitation. A study for the Campaign for Bedsit Rights by G Randall estimated that the chances of being killed or injured by fire in an HMO are 28 times higher than for residents of other dwellings.

26. He then added some comment of his own:

> The high or very high risks from fire to occupants of HMOs is confirmed by the study entitled "Fire Risk in HMOs" … HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and unsatisfactory kitchen, washing and lavatory facilities. It is of the greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control.

27. The process of licensing effectively provides an audit of the safety and condition of the property and of the landlord's management arrangements, supported wherever and whenever possible by detailed inspections by council officers who are expert in such matters. Owners and occupiers are not normally expert and can't be expected to know how to identify or remedy relevant issues without expert help. It is not uncommon that landlords are surprised at how much a local authority requires them to do to bring a property up to the required standard and, in particular, object to matters being raised about which the occupiers have not complained.

28. If a landlord does not apply for a licence, that audit process never happens. As a result, the landlord can save significant sums of money by not incurring various costs which may cover, amongst other matters:

(a) Consultants – surveyor, architect, building control, planning

(b) Licensing fees

(c) Fire risk assessment

(d) Smoke or heat alarm installation

(e) Works for repair or modification

(f) Increased insurance premiums

(g) Increased lending costs

(h) Increased lettings and management costs.

29. The prospect of such savings is a powerful incentive not to get licensed. Not getting licensed means that important health and safety requirements may get missed, to the possible serious detriment of any occupiers. RROs must be set at a level which disincentivises the avoidance of licensing and disabuses landlords of the idea that it would save money.

30. The Respondent's given reason for his failure to licence his property is that, although he was aware that properties with 5 or more occupiers were subject to mandatory licensing, he was genuinely unaware of Hounslow's additional licensing scheme. This is the only property he rents out.

31. The Respondent admitted he had no system or process for keeping up-to-date on his obligations – he said that the need to do this was one of the things he had learned from these proceedings. He claimed that he had a lot to process in the last two years, including caring for his ill father.

32. The Respondent asserted that the property was in such good condition that the Applicants lived in "real comfort". He feels that the Applicants have treated him harshly and are only out to gain as much money as they can. He presented character references from other previous tenants, including from Ms Kaur (the Applicants had no questions in cross-examination for her).

33. The Respondent also claimed he had had to clear up vomit and blood and the Applicants "hid" his mail, both of which the Applicants vehemently denied. Both claims seem to the Tribunal to be inherently incredible. There was no evidence or context for the former allegation while, for the latter, there is no motive and it contradicts the Respondent's own description of the good relationship he said he had with the Applicants.

34. It is clear to the Tribunal that, at least to this point, the Respondent has taken a far too casual approach to his obligations. Both parties appear to have exaggerated their respective cases to at least some degree but there is more than enough to justify the Applicants' concerns. The Respondent has let out and shared a house with women and then acted with somewhat stereotypically male insensitivity towards those concerns.

35. The Respondent has shown an insufficient appreciation of both his obligations and the reasons for them. Taking into account all the circumstances, the Tribunal concluded that this was a serious default which warrants a proportionate sanction.

36. Further, under section 44(4) of the 2016 Act, in determining the amount of the RRO the Tribunal must, in particular, take into account the conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences.

37. As referred to above, the Respondent's conduct has been short of the appropriate standard. The Tribunal is not satisfied that his criticisms of the Applicants' conduct are justified. The penalty imposed by Hounslow has been taken into account in the reasoning above.

38. The Respondent has provided some evidence of his financial circumstances. He is clearly right to assert that he is not a wealthy man. However, it is not a matter of whether the RROs are affordable. They are intended as penalties and the payer is supposed to feel their effect. The Tribunal is not satisfied that the Respondent's financial circumstances should affect the amount of the RROs, one way or the other.

39. In the light of the above matters, the Tribunal has concluded that, after the aforementioned deduction for utilities, the amounts claimed should be reduced by a further 25%:

    (a) Abigail Parkes: £6,300 - £600 = £5,700, less 25% = £4,275
    (b) Cally Richardson: £7,230 - £600 = £6,630, less 25% = £4,972.50
    (c) Angelique Ajala: £7,825 - £600 = £7,225, less 25% = £5,418.75

40. The Applicants also sought reimbursement of the Tribunal fees: a £100 application fee for each Applicant and a single hearing fee of £200. The Applicants have been successful in their application and had to take proceedings to achieve this outcome. Therefore, it is appropriate that the Respondent reimburses the fees.

Name: Judge Nicol **Date:** 30th September 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

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.

(a) 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.

(b) 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.

(c) 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

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

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

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

Section 41 Application for rent repayment order

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

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

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

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

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

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

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

(b) the financial circumstances of the landlord, and

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