FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/HMF/2024/0051**
Property	**:**	**12 Kneller Road, Lewisham, London SE4 2AP**
Applicants	**:**	**Emilija Krivosic Nadine Gelmar Holly Williams Tuva Wedin Sophie Corroon Anna Amodio**
Representative		**Justice for Tenants**
Respondent	**:**	**Zehra Hassan**
Representative	**:**	**Landlord Advice UK**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol Mr M Cairns MCIEH**
Date and Venue of Hearing	**:**	**26th September 2024; 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**2nd October 2024**

DECISION

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1. **The Tribunal has no jurisdiction to award a Rent Repayment Order to one of the Applicants, Ms Tuva Wedin.**
2. **The Respondent shall pay to the remaining Applicants Rent Repayment Orders in the following amounts:**
   (a) Emilija Krivosic: £2,310

(b) Nadine Gelmar: £2,469

(c) Holly Williams: £1,848

(d) Sophie Corroon: £1,918.36

(e) Anna Amodio: £2,700

3. The Respondent shall further reimburse the remaining Applicants their Tribunal fees of £720.

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

Reasons

1. The Applicants were tenants at 12 Kneller Road, Lewisham, London SE4 2AP, a 3-storey terraced house, on the following dates:

- Emilija Krivosic: 8th November 2022 until 9th May 2023
- Nadine Gelmar: 20th September 2022 until 20th March 2023
- Sophie Corroon: 28th July 2022 until 25th January 2023
- Holly Williams: 20th September 2022 until 4th February 2023
- Anna Amodio: 17th October 2022 until 16th April 2023
- Tuva Wedin: 29th January 2023 until 26th October 2023

2. The Respondent owns the freehold of the property and granted each of the Applicants their tenancies at 12 Kneller Road.

3. The Applicants seek rent repayment orders ("RROs") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act"). The application was made to the Tribunal on 22nd January 2024.

4. The Tribunal issued directions on 19th April 2024. There was a face-to-face hearing of the application at the Tribunal on 26th September 2024. The attendees were:

- Four of the Applicants (Ms Krivosic, Ms Gelmar, Ms Corroon and Ms Amodio);
- Mr Brian Leacock, Justice for Tenants, representing the Applicant; and
- The Respondent, representing herself.

5. The documents available to the Tribunal consisted of:

- A bundle of 312 pages from the Applicants;
- A bundle of 268 pages from the Respondent;
- A 4-page Response from the Applicants; and
- A Skeleton Argument from Mr Leacock.

The offence

6. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant 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. In paragraph 18 of her Statement of Case, the Respondent stated:

> It is accepted that the property was subjected to HMO licensing during the relevant period and was not so licensed.

8. The Respondent had successfully applied for a licence in 2017. That licence expired in February 2022. The Respondent had been anticipating a reminder from the local authority, the London Borough of Lewisham, around 3 months ahead of the expiry of her current licence. When that didn't materialise, she tried to chase them by a phone call in December 2021 and another one in January 2022. She says she spoke to an officer called Ursula who told her the department would get back to her as no applications were being processed due to the back log caused by the lockdown of the COVID pandemic.

9. The Respondent left it at that. She didn't chase Lewisham again or consider whether or how to make a renewal application. When Lewisham emailed her in April 2023 saying they had to inspect the property to see if there was an unlicensed HMO, she thought they were responding to her phone messages from 15 months previously (in fact, this was part of a response to complaints from the Applicants which had already involved a visit to the property in March 2023).

10. The Tribunal asked the Respondent why she had not initiated an HMO renewal application during the 15 months of silence from Lewisham. She said the property had to be inspected before an application could be made and pointed to the April 2023 email message as supporting that. She refused to believe Lewisham's officers had visited for any reason other than in response to her phone messages.

11. Just a moment's thought is required to see that the Respondent is mistaken. Hard-pressed authorities do not arrange and carry out inspections or act prior to a formal application just because they got a phone message 15 months earlier. They were inspecting because they suspected the commission of a criminal offence. Although a reasonable local authority will seek to help by sending reminders, the responsibility lies solely on a landlord to ensure that they are properly licensed. Making a couple of phone calls is no excuse for not even attempting to apply for a licence.

12. The Respondent pointed to the fact that Lewisham seemed satisfied on inspection and commenced the application process in May 2023. They got as far as issuing a draft licence before the Respondent decided to sell

the property. This was her only property for letting and she intends not to become a landlord again.

13. However, the Respondent conceded that the property was unlicensed for 15 months when it should have been licensed. She conceded that she had committed the offence during that period and that the above circumstances do not amount to a reasonable excuse under section 72(5) of the 2004 Act. The Tribunal believes she is right to make that concession. What happened does constitute a degree of mitigation and is relevant when considering the quantum of the RROs, as set out further below, but it does not amount to a reasonable excuse for managing and having control of an unlicensed HMO.

14. 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.

15. This is subject to one caveat. The Respondent pointed out that one of the Applicants, Ms Tuva Wedin, occupied a self-contained studio on the top floor. The only things she shared with the other occupants of the building were the hallway/landings and stairs to access the entrance to the property and the ground floor rear where her washing machine was located.

16. Mr Leacock pointed out that Ms Wedin's washing machine was broken so she had to share the other Applicants' washing machine and that she had to top up the meters just like the others in order to get her gas and electricity. However, the Tribunal is not satisfied that this is enough to bring Ms Wedin within section 254(2)(f) which includes in the definition of HMOs that "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." "Basic amenities" are defined in section 254(8) as a toilet, personal washing facilities, or cooking facilities – washing machines, utility meters and hallways/stairs are not included.

17. Therefore, Ms Wedin is not a tenant of the HMO in this case. Further therefore, the Tribunal has no jurisdiction to award her a RRO.

Rent Repayment Order

18. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the 2016 Act to make RROs for 5 of the Applicants. 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.

19. 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.
>
> 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. …
>
> 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.

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. …

20. 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.

21. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 20, Judge Cooke provided the following 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;

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:

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).

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

(a) Emilija Krivosic: £3,850 for the period of 8th November 2022 to 16th April 2023.
(b) Nadine Gelmar: £4,115 for the period 20th September 2022 to 20th March 2023.
(c) Holly Williams: £3,080 for the period of 20th September 2022 to 4th February 2023.
(d) Sophie Corroon: £3,197.26 for the period of 20th September 2022 to 25th January 2023.
(e) Anna Amodio: £4,500 for the period of 17th October 2022 to 16th April 2023.

23. In relation to utilities, the Respondent provided wi-fi. The other utilities were paid for outside the rent. For a 6-week period, the wi-fi worked intermittently. It was beyond the Respondent's control but, in any event, for that period the service was not provided. The Respondent said she asked the Applicants to contribute to the cost but only two did so. She did not say what the cost of the wifi or the amount of the contribution were.

24. The instruction of the Upper Tribunal is to subtract any sum that represents payment for utilities that only benefited the tenant. However, it cannot be assumed that the whole of a 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.

25. 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."

26. 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 24 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.

27. In the absence of a clear rationale from the Upper Tribunal for the deduction of utilities or evidence as to the amount in question, the Tribunal declines to make any deduction in this case.

28. 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 Upper 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.

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

(a) The Respondent operates a system of fees if a tenant is late with payment of rent. The Tenant Fees Act 2019 has rules about such fees. Under paragraph 4 of Schedule 1, a late payment fee is allowed but only if 14 days have passed since the rent was due. The Respondent demanded a fee just minutes after Ms Gelmar had failed to pay rent on time. When this was put to the Respondent, she defended the principle of late payment fees and seemed extremely reluctant to comply with the statute or even to see why she should.
(b) 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 said she had kept them in a folder in the understairs cupboard at the property, but did not assert that she had ever provided or showed them to the Applicants.
(c) The Applicants asserted that their rooms were cold. The Respondent alleged that this resulted from the Applicants failing to pay into the top-up meter provided for the gas and electricity supply. However, it appeared that the problem went beyond just a lack of sufficient heating.
(d) There was mould in the bathroom and Ms Williams's room. The Respondent put this squarely on the Applicants for drying clothes indoors and not opening their windows to increase ventilation. She did not explain how opening windows was compatible with increasing the heating. She said her knowledge about condensation damp and mould came from her experience as a landlord and from talking to other

landlords on online forums such as "Project 118". She was aware of the Management of Houses in Multiple Occupation (England) Regulations 2006 and her obligations under them but preferred to react to problems like this with "common sense". In the CIEH "Practice Notes: Condensation Dampness" at paragraph 1.4, the need for correct diagnosis of the cause of the damp producing mould growth is stressed and, at 1.5 there is the following observation:

> *Where occupants are blamed for condensation, whether real or imagined, they are often advised to turn up the heat and open the windows. Such advice may be given after no thorough investigation of the dwelling concerned or the factors leading to the condensation problem. The advice is therefore almost always an inadequate technical analysis and fails to take into account the circumstances of the occupants. It is wasteful of fuel and may actually increase condensation risk.*

Here factors such as the cold construction represented by the solid brick walls and also the increased water vapour production generated in multi-occupied accommodation by activities such as the washing and drying of laundry, cooking and bathing seemed underappreciated, as did the concept of excessive ventilation causing heat losses.

(e) The Respondent said she was aware that the local authority had standards for HMOs but was unaware that this includes the use of quarterly meters for gas and electricity rather than the pay-as-you-go top-up meters which she used.

(f) The Applicants complained that the Respondent attended from time to time without notice in order to access an office she kept at the property. They alleged that this was a breach of the covenant for quiet enjoyment but that only applies to the part of each tenancy for which the tenant has exclusive possession, namely their room. Occupiers' duties under reg.10 of the Management of Houses in Multiple Occupation (England) Regulations 2006 requires occupiers to allow the manager to enter at all reasonable times.

(g) There was an issue with a smoke detector going off in the middle of the night. The Applicants complained that the Respondent was initially reluctant to look at it and then switched it off, leaving it inoperative for over a month.

(h) 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, she tried to impose a cleaning rota on the Applicants. She asserted that the Applicants were poor at keeping the communal areas clean and any deficiencies were their fault.

(i) The dishwasher in the kitchen never worked.

30. As well as relying on the matters referred to in paragraphs 8-10 above, the Respondent replied to these allegations by pointing out that she had had a licence for 5 years which in itself confirmed that the property met the requisite standards. Further, she continued to seek to maintain the property to the required standards so that the Applicants never had to live in a defective property. She said this was confirmed by the fact that,

when Lewisham did inspect in April 2023, they were "extremely impressed" by the standards at the property (although their opinion was not evidenced) and were prepared to renew her licence.

31. The fact that the property used to be licenced and that the Respondent made a genuine effort to maintain standards do weigh in her favour but they do not excuse the Respondent's failure to seek a renewal of her licence. 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.

32. 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.

33. 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. It cannot be assumed that a local authority would be as satisfied with a property when the licence expires as it was when they first granted the licence.

34. 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.

35. 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.

36. The Respondent has shown an insufficient appreciation of both her 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.

37. 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. The Respondent did not provide any information on her financial circumstances and she has no previous convictions.

38. As referred to above, the Respondent's conduct was somewhat short of the appropriate standard. The Tribunal is not satisfied that her criticisms of the Applicants' conduct are justified.

39. In the light of the above matters, the Tribunal has concluded that the amounts claimed should be reduced by 40%:

(a) Emilija Krivosic: £3,850 less 40% = £2,310
(b) Nadine Gelmar: £4,115 less 40% = £2,469
(c) Holly Williams: £3,080 less 40% = £1,848
(d) Sophie Corroon: £3,197.26 less 40% = £1,918.36
(e) Anna Amodio: £4,500 less 40% = £2,700

40. The Applicants also sought reimbursement of the Tribunal fees: a £100 application fee for each Applicant and a single hearing fee of £220. 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:** 2nd October 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).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");
(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;
(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

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.