FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/HMF/2024/0127**
Property	:	**Flat 8 Vibeca Apartments, 7 Chicksand Street, London E1 5LD**
Applicant	:	**Jack Edgar**
Representative		**Mr M Williams, Environmental Health and Trading Standards, London Borough of Tower Hamlets**
Respondent	:	**S Bains & Son Ltd**
Type of Application	:	**Application for a rent repayment order by tenant**
Tribunal	:	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and Venue of Hearing	:	**15th October 2024;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16th October 2024**

DECISION

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1. **The Respondent shall pay to the Applicant a Rent Repayment Order in the amount of £6,800.**
2. **The Respondent shall further reimburse the Applicant his Tribunal fees of £330.**

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

Reasons

1. The Applicant was the tenant at Flat 8 Vibeca Apartments, 7 Chicksand Street, London E1 5LD, a one-bedroom flat on the second floor of a 5-

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storey block, from 17th March 2023 until 16th March 2024. According to the tenancy agreement, the Respondent was the landlord and MacArthur Morrison Ltd were their agents.

2. The Applicant seeks a rent repayment order ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act"). The application was made to the Tribunal on 20th March 2024.

3. The Tribunal issued directions on 21st May 2024. There was a face-to-face hearing of the application at the Tribunal on 15th October 2024. The attendees were:

- The Applicant; and
- Mr Williams, representing the Applicant.

4. The documents available to the Tribunal consisted of:

- A bundle of 102 pages from the Applicant;
- A bundle of 411 pages from the Respondent; and
- A 3-page Response from the Applicant.

Respondent's non-attendance

5. The Respondent did not attend the hearing nor send a representative. Under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
(b) considers that it is in the interests of justice to proceed with the hearing.

6. The Tribunal's directions required the parties to complete Listing Questionnaires giving their dates to avoid for the final hearing. The Respondent did so – the Tribunal received their Listing Questionnaire on 17th June 2024. By letter dated 18th June 2024 the Tribunal notified the parties of the hearing date. On 28th August 2024 the Tribunal received the aforementioned bundle from the Respondent containing their statement of case and witness and documentary evidence.

7. The Respondent's bundle was received from Freemans solicitors. However, at no point did they go on the record. Therefore, at all times the Tribunal wrote to the Respondent using the same email address. This worked for the directions and Listing Questionnaire so there is no reason to think it did not work at other times.

8. The Respondent has not contacted either the Tribunal or the Applicant since their bundle, including about not attending the hearing. If they had not received the hearing date, the Tribunal would have expected them to have queried this in the months that followed their Listing Questionnaire

or their bundle. The likelihood is that their lack of contact is by their own choice.

9. The Tribunal is satisfied that reasonable steps have been taken to notify the Respondent of the hearing. If the hearing were postponed, both the Tribunal and the Applicant would be substantially inconvenienced and there is no reason to think that there is any better prospect of the Respondent attending any adjournment date. In the circumstances, the Tribunal is further satisfied that it is in the interests of justice to proceed with the hearing in the Respondent's absence.

The offence

10. 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 accommodation which is required to be licensed but is not so licensed, contrary to section 95(1) of the Housing Act 2004 ("the 2004 Act").

11. In paragraphs 1 and 2 of their Statement of Reasons to Oppose the Application, the Respondent accepted that the property was subject to a Selective Licensing scheme during the period of the claim and that the property did not have a licence at that time.

12. However, the Respondent further asserted that they do not meet the statutory test of a "person having control" or a "person managing" in section 263 of 2004 Act.

13. The landlord under the tenancy agreement was the Respondent. Their agents were MacArthur Morrison. Mr Greg Williams of MacArthur Morrison was responsible for day-to-day management of the property, including receiving the rent. He did so as agent for the Respondent. As directed under section 8, clause 2 of the tenancy agreement, the Applicant discharged his liability to the Respondent by paying into an account held by the agents. The Respondent claims that their agents then paid that money to a related company, S Bains Ltd, which is also the freeholder.

14. In his witness statement, Mr Sukhjit Bains, a director of the freehold company, S Bains Ltd, explained that the building had been built "by my father and uncles" in 2006-2008 and "originally was owned by my father and my Uncle's company, Freetown Ltd. The freehold was transferred to S Bains Ltd on 14th December 2020.

15. The Respondent claimed that the fact that the rental income was paid to a related company means that they did not "receive" it and so do not control or manage the property. However, the Respondent may choose to have payments owed to them given to any third party they like but that does not get around the fact that they are entitled to receive the income under the terms of the tenancy. The Respondent accepted this payment arrangement without protest and, therefore, consented to it, even

assuming that there wasn't prior agreement. They received the rental payments in that they went where they wanted them to. "Receipt" is not limited to circumstances where the money literally is given to the landlord's custody. Otherwise, it would be easy for landlords to avoid liability, for example by setting up a related company to take payment.

16. The Tribunal is satisfied that the Respondent was a person having control and managing the property and that all the elements of the offence under section 95(1) were present. However, there are two defences under sub-sections (3) and (4).

17. In his witness statement, Mr Bains explained that, when the previous selective licence was revoked on 28th September 2022 because it was in the name of the predecessor-in-title, Freetown Ltd, he was aware that a new licence was required but simply did not get round to it. The Tribunal does not understand the Respondent to be claiming that this constitutes a reasonable excuse under section 95(4). For reasons which are obvious, the Tribunal believes this to be the correct approach.

18. A licence application was made on 17th July 2023. The Applicant has accepted that his claim is limited to that date. However, the defence under section 95(3)(b) that an application for a licence had been duly made in respect of the property is only available to the person who otherwise would have committed the offence under section 95(1). In this case, the licence application was made by S Bains Ltd, not by the Respondent. Therefore, the defence is not available to the Respondent.

19. Further therefore, the Applicant was not obliged to limit his claim to the date of the licence application. He has only claimed repayment of his rent for the first four months of his tenancy rather than for the whole 12 months. The Tribunal pointed this issue out to the Applicant at the hearing but he did not ask to amend his claim. Given that the Respondent had only ever been aware that the Applicant's claim was just for the four months, it would have been unfair for the Tribunal to extend the period in their absence. Therefore, if the Applicant had applied to amend the claim at the hearing, the Tribunal would almost certainly have refused it.

20. If the Tribunal had permitted the Applicant to extend the period of his claim, the fact that a licence had been sought for the property would have been relevant to the calculation of the quantum of the RRO (see further below) and would likely have resulted in a substantial discount on the maximum amount. However, since the Applicant has limited his claim to the four-month period, it was not necessary to consider this issue.

Rent Repayment Order

21. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the 2016 Act to make a RRO. 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.

22. 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.

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. ...

23. 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.

24. 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).

25. The Applicant seeks a RRO for the rent he paid at the property for the first four months of his tenancy from 17th March to 16th July 2023, namely £7,600. This is not the whole of the rent which could have been claimed for the reasons already referred to above.

26. No utilities were included in the rent and so no deduction may be made for that.

27. 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, principally by the maximum sanctions for each, 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.

28. The Applicant pointed to a number of matters which he asserted made this case more serious:

(a) The property suffered from condensation damp, exacerbated by a mechanical vent in the kitchen not working properly. In his witness statement Mr Williams admitted that "the kitchen extractor was really poor" but asserted that the issues with condensation were not related to that. In revealing comments, Mr Bains in his witness statement blamed the condensation on tenant activity and relied on Mr Williams having provided a leaflet about how to minimise condensation. However, neither of them suggested that anyone had attempted to investigate the cause of the condensation in this property. 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.*

(b) Two of the 3 radiators at the property, in the hall and in the living room, were inoperative for some time until the Applicant got a contractor attending to look at the boiler to look at them too. Mr Williams said in his witness statement that he waited until his preferred gas safety engineer returned from leave to fix the radiator so that it took from 25th April until 18th May 2023. He accepted that the hallway radiator not working would cause the thermostat, also located in the hallway, not to register any heat and to turn the heat on at inappropriate times but suggested this was not urgent.

(c) Multiple large leaks appeared in the ceiling of the flat, likely contributing to mould issues. Mr Williams attributed them to a leaking washing machine in the flat above. There were also pre-existing leak stains on the ceiling. The Applicant's bundle contained photos evidencing these matters but he conceded that the leaks occurred after his period of claim.

(d) The Applicant also blamed the condensation and leaks for a silverfish infestation. Mr Williams sent a contractor who blamed the problem on the humid nature of the property which Mr Williams blamed not on the aforementioned condensation but on an air-conditioning unit which the

Applicant owned, despite apparently not asking the Applicant anything about its use.

(e) Multiple homeless people accessed the building and were living there for several days, engaging in anti-social behaviour, to the detriment of the residents' sense of safety. Mr Bains claimed in his witness statement that this was a rare event caused by residents allowing the people in and Mr Williams said in his witness statement that he emailed the tenants in the building about use of the entry system. However, it is notable that Mr Bains claimed it was a problem for the police despite the fact that trespass is not a criminal offence and, as a director of the freehold company, he has legal remedies which he chose not to use. Mr Williams blamed the tenants and eschewed any responsibility.

(f) The front door of the building stopped working multiple times so that residents could not get in or out. The Applicant had to trespass through a neighbouring garden to get to the rear garden access door to the building.

(g) The bin store access also often did not work resulting in piles of rubbish outside, attracting flies and possibly rodents. Mr Williams claimed that this issue was attended to promptly each time it happened. He said that, when the lock had to be changed, it took some time, about a week, to get the new key to the refuse collectors and, in the meantime, he sent staff to clear the rubbish which had piled up outside.

(h) The intercom system for entry to the building was often inoperative. Mr Williams said the system was 18 years old and needed replacement. Mr Bains dismissed as a minor inconvenience that residents had to make their way down to the front door to take deliveries. He said the replacement was installed on 27th February 2024.

(i) The lift was often not fully operative although the Applicant again conceded that this was principally outside the period of his claim. Mr Williams said he was not aware of this. Mr Bains alleged that the lift broke down once in September 2023 and the contractor attended the following day. Mr Bains blamed tenant activity for the breakdown. The Tribunal accepts the Applicant's evidence that the lift was inoperative more than once.

(j) The furnishings provided with the property were in poor condition, including a badly-stained mattress, a glass table that wobbled too much to be of use and a badly scratched coffee table. The Applicant conceded that some items, including a broken oven door handle, were relatively minor. Mr Williams conceded that the Applicant had a "right to moan as the installation of a new mattress did take some time" but asserted that the other matters were minor.

(k) The Applicant also complained that appliances provided with the property were often breaking down or unfit for purpose.

(l) The Applicant complained of poor communication. Mr Williams accepted that this sometimes happened but only on non-urgent matters.

29. In their witness statements Mr Bains and Mr Williams denied many of these complaints or that they were serious and praised each other for their respective roles in managing the building. However, the Tribunal has to weigh their evidence in the light of the fact that they were not present to be cross-examined. In contrast, the Tribunal was able to

question the Applicant at the hearing and were satisfied that he gave his evidence in a straightforward and honest manner, conceding matters when appropriate.

30. Taking the Respondent's evidence at its highest, it is clear to the Tribunal that there was a number of problems which persisted over time, such as the condensation, the front door, the intercom, the bin store and the lift, even when some efforts were made to address them. Both Mr Bains and Mr Williams sought to minimise the seriousness of everything, not just matters which were obviously minor. This added up to a picture of careless and only sporadically effective management.

31. The facts that the property used to be licenced and that the freeholder has applied for a new one are relevant but do not excuse the Respondent. It is clear from his witness statement that Mr Bains regarded applying for a licence as a non-urgent matter he could get round to at his convenience. 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 a licence expires or is revoked 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 their obligations and the reasons for them. Taking into account all the circumstances, the Tribunal concluded that this was a serious and deliberate 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 their financial circumstances and they have no previous convictions.

38. As referred to above, the Respondent's conduct was somewhat short of the appropriate standard. In *Newell v Abbott* [2024] UKUT 181 (LC) the Upper Tribunal undertook a review of RRO awards in previous cases to see how such matters translated into the percentage of the maximum award which may be appropriate in individual cases. Judge Rogers KC stated,

> 57. This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent

repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health.

39. The cases reviewed by Judge Rogers KC all involved deductions from the maximum possible amount. As already stated, the Applicant had already limited his claim to one-third of the maximum possible amount. In the circumstances of this case, the Tribunal has concluded that the amount claimed should be reduced from £7,600 to £6,800 (a reduction of just over 10%).

40. The Applicant also sought reimbursement of the Tribunal fees: a £110 application fee and a hearing fee of £220. The Applicant has been successful in his application and had to take proceedings to achieve this outcome. Therefore, it is appropriate that the Respondent reimburses the fees.

Name: Judge Nicol **Date:** 16th 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 95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) 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 90(6), and

(b) he fails to comply with any condition of the licence.

(3) 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 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) 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.

(7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) In subsection (8) *"relevant decision"* means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 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 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.