



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

Case reference : LON/00AP/HMF/2021/0107

Property : 695 Lordship Lane, London, N22 5JY

Applicants : (1) Patricia Sanchez Roman
(2) Christina Garcia Carrasco
(3) Laura Garcia Carrasco
(4) Olga Ortega Jurado

Representative : Represent Law (Ms Hoxha)

Respondent : (1) Edward Acheampong
(2) Emmanuel Acheampong

Representative : Mr Edward Acheampong

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

Tribunal members : Judge Tueje
Mrs A Flynn MA MRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 31st January 2025

Date of decision : 19th March 2025

DECISION

In this determination, statutory references relate to the Housing Act 2004 unless otherwise stated.

Decisions of the Tribunal

1. It had already been determined by a decision of the First-tier Tribunal dated 4th October 2021 that the First Respondent committed an offence under section 72(1) without reasonable excuse, and thus it made a rent repayment order. That decision was subsequently upheld and remitted to determine the amount of the rent repayment order. Following the remitted hearing, we determine the global amount payable to the Applicants is £5,250.
2. The global sum is to be paid to the Applicants within 28 days of the date this decision is sent to the parties, and shall be paid as follows:
 - 2.1 £1,750 to Patricia Sanchez Roman, the First Applicant, for the period 11th October 2019 to 24th April 2020;
 - 2.2 £1,750 to Cristina Garcia Carrasco, the Second Applicant, for the period 11th October 2019 to 24th April 2020;
 - 2.3 £1,750 to Laura Garcia Carrasco, the Third Applicant, for the period 11th October 2019 to 24th April 2020
3. No rent repayment order is made in favour of Olga Ortega Jurado, the Fourth Applicant.
4. The Application for a rent repayment order against the Second Respondent is dismissed.
5. The Tribunal also determines that within 28 days of the date this decision is sent to the parties the First Respondent shall pay to the Applicants £300 as reimbursement of the Tribunal's fees.
6. The reasons for the Tribunal's decisions are given below.

The Application

7. This decision relates to an Application for a rent repayment order dated 9th April 2021, made under section 41 of the Housing and Planning Act 2016.
8. The Applicants are the former tenants of 695 Lordship Lane, London, N22 5JY ("the Property"), which is a 4-bedroom flat.
9. The Application is made against the First and Second Respondents who are the joint long leaseholders of the Property.

10. In their application form the Applicants are claiming a rent repayment order for the following sums:
 - 10.1 The First Applicant in the amount of £6,500, which she later reduced to £5,670, the latter was calculated as 45 weeks' rent at £125 per week;
 - 10.2 The Second Applicant in the amount of £3,875, calculated as 31 weeks' rent at £125 per week;
 - 10.3 The Third Applicant in the amount of £3,500, calculated as 28 weeks' rent at £125 per week; and
 - 10.4 The Fourth Applicant in the amount of £1,960, calculated as 14 weeks' rent at £140 per week.

The Background

11. The background, primarily as it relates to the amount of the rent repayment order, is set out below.
12. The First Respondent had been cohabiting in the Property with his girlfriend. They stopped cohabiting at the time or around the time their relationship ended, although she stayed at the Property for a period of time as the First Respondent's lodger, until the First Respondent moved out of the Property. Over time, other occupiers moved in, renting rooms from the First Respondent. Insofar as the Applicants' occupation is concerned, their occupation began as follows:
 - 12.1 The First Applicant's occupation began on 29th March 2018;
 - 12.2 The Second Applicant's occupation began on 14th September 2019;
 - 12.3 The Third Applicant's occupation began on 11th October 2019; and
 - 12.4 The Fourth Applicant's occupation began on 18th January 2020.
13. After the Third Applicant moved in on 11th October 2019, she paid an additional £250 to the First Respondent. She paid that sum on 26th October 2019. He said that payment was two weeks' rent in advance, while the Third Applicant claimed it was a deposit. Both parties accept that the payment was subsequently used to discharge rent that fell due during the Third Applicant's tenancy. This payment was later the subject matter of separate proceedings brought in the county court under section 214. The outcome was that the county court concluded that the sum was paid as a deposit.
14. The arrangement between the parties was that the rent included bills, namely water charges, broadband, electricity and gas.

15. The First Respondent states that during the period 11th October 2019 to 25th April 2020, a total of £980.60 should be deducted from the rent repayment order to reflect the amount he paid for utilities. The Applicants do not dispute that sum reflects an appropriate amount for the total cost of utilities during the relevant period.
16. Except that the Fourth Respondent vacated the Property on 17th April 2020, the other Applicants moved out on 25th April 2020. As stated, their application for a rent repayment order is dated 9th April 2021.
17. The First Respondent accepts that he did not apply for an HMO licence, and explains he did not apply for a licence after the Applicants vacated because he stopped renting out rooms at the Property.
18. Following receipt of the Application, by an order dated 26th May 2021 the Tribunal gave directions, and listed the matter for a final hearing on 19th August 2021. In the event, the hearing took place on 19th August 2021 and 23rd September 2021, followed by a written decision dated 4th October 2021 (the “Original Decision”).
19. In its Original Decision, except that no award was made in favour of the Fourth Applicant, the Tribunal made a rent repayment order for the period 11th October 2019 to 25th April 2020 as follows:
 - 19.1 The First Applicant in the amount of £3,049.30;
 - 19.2 The Second Applicant in the amount of £3,049.30; and
 - 19.3 The Third Applicant in the amount of £3,049.30.
20. The above rent repayment order included a deduction of £4.00 per week per tenant for utilities. It represented 90% of the rent paid by those 3 Applicants during the period of the offence, the Tribunal having deducted 10% to reflect the First Respondent’s good conduct.
21. The Tribunal rejected the First Respondent’s defence that his ignorance of the HMO licensing requirements amounted to a reasonable excuse. Although they seem to have accepted the offence was committed out of ignorance.
22. The Original Decision also contained the following findings regarding the parties’ conduct (at paragraphs 57 to 60):

There is no evidence before the Tribunal to question the conduct of A1, A2 or A3. The Tribunal accepted that they had paid their rent, and R1 confirmed that there were no rent arrears.

However, the Tribunal found that A4’s conduct had caused a serious disruption to the previously harmonious relationship between R1 and

A1, A2 A3, by using a monkey emoji in messages and having made a spurious police report.

While R1 had wrongly given two weeks' notice to the Applicants, the tribunal took the view that the deep upset caused to him by racial slurs had instigated this action. In any event this notice was retracted. His conduct as a landlord appeared to the tribunal to have previously been good until A4 upset the relationship.

On the basis of R1's good conduct, the tribunal make a 10% deduction from any award of an RRO.

23. No rent repayment order was made against the Second Respondent.
24. The First Respondent appealed to the Upper Tribunal in respect of the amount of the rent repayment order.
25. He was granted permission to appeal on the following grounds:
 - 25.1 That the First-tier Tribunal's determination was contrary to the decision in *Williams v Parmar* [2021] UKUT 244 (LC); [2022] H.L.R 8;
 - 25.2 The amount deducted for utilities was inadequate in light of the evidence; and
 - 25.3 There had not been a proper consideration of the First Respondent's financial circumstances.
26. The Upper Tribunal's decision in the First Respondent's appeal has been reported at *Acheampong v Roman* [2022] UKUT 239 (LC); [2022] HLR 44. It allowed the First Respondent's appeal, and set-aside the Original Decision, stating (at paragraph 46):

Accordingly the matter is remitted to the FTT for determination of the amount of the rent repayment order. The three respondents will have to ask the FTT for directions so that it can make the necessary findings of fact about utilities and the landlord's financial circumstances, after a short hearing if necessary, so that it can then determine the amount of the rent repayment order. I repeat that the findings of fact about the parties' conduct are undisturbed and that the parties should not seek to re-open them.
27. Pursuant to the Upper Tribunal's decision, on being remitted back to the First-tier Tribunal, directions were made in an order dated 15th October 2024, which made provision for the parties to submit their statements of case, and it also listed the remitted final hearing.
28. As the conduct of the parties during the Applicants' occupation was dealt with in the Original Decision, those findings were not the subject of the appeal to the Upper Tribunal. Therefore, as stated at paragraph

46 of the Upper Tribunal's decision, the findings on conduct as set out in the Original Decision are undisturbed by the appeal.

29. As regards directions for the remitted hearing, on around 11th November 2024, the Applicants provided details of the rent they claimed to have paid during the period of the offence as follows:

29.1 £5,670¹, being £125 x 45 weeks paid by the First Applicant;

29.2 £3,875, being £125 x 31 weeks paid by the Second Applicant; and

29.3 £3,500, being £125 x 28 weeks paid by the Third Applicant.

30. As stated, the parties were involved in separate proceedings brought under section 214 of the Housing Act 2004 in respect of sums paid to the First Respondent by the Applicants. The Applicants claimed these were deposits, but had not been protected in one of the government-recognised schemes. The First Respondent accepted sums had been paid and not protected, which he said was because the payments were rent in advance. It is only the sum paid by the Third Applicant that is relevant to this application.

31. Returning to the rent repayment order, and the parties' preparation for the remitted hearing, in his statement of case dated 20th December 2024, the First Respondent makes various criticisms of the rent payment information provided by the Applicants on around 11th November 2024. The most relevant of those criticisms relates to Ms L Garcia Carrasco's £250 payment made on 26th October 2019 (see paragraph 13 above).

32. When calculating the maximum amount of the rent repayment order payable to the Third Applicant, she included the £250 payment that was the subject of the deposit claim. The First Respondent referred the Tribunal to the Third Applicant's witness statement and exhibit provided for the original Tribunal hearing on 19th August 2021 and 23rd September 2021. The latter was the Third Applicant's bank statement showing £250 was debited from her bank account on 26th October 2019. The First Respondent objected to this payment being included in the calculation of the rent paid by the Third Applicant for two reasons. Firstly, he argued that only payments made during the period the offence was being committed should be taken into account. He relied on the Court of Appeal's decision in *Kowalek v Hassanein Ltd [2022] 1 WLR 4558* for support. Secondly, he argued that in the section 214 county court deposit claim, the Third Applicant had argued, and the court had found, that the £250 was paid as a deposit. Therefore, the First Respondent argued, that the Third Applicant, could not now argue for the purposes of a rent repayment order, that the £250 was rent.

¹ This appears to be a miscalculation; the correct figure is £5,625.

The Legal Framework

33. The relevant statutory provisions of the Housing Act 2004 and the Housing and Planning Act 2016 are set out in the appendix.
34. Regarding the decision in *Kowalek*, during the Upper Tribunal proceedings, the tenants had initially raised an issue regarding the deposit, which they subsequently decided not to pursue. Nonetheless, when dealing with the disputed grounds of appeal, the Deputy President also gave guidance regarding the treatment of deposits in the following terms (at paragraph 43):

If a tenancy deposit which is held by a landlord, or by a deposit holder, is released from the terms on which it is held and is then used by the landlord to satisfy arrears of rent, the fact that it had not originally been paid as rent would not prevent it from being taken into account in calculating a rent repayment order. In those circumstances the extended definition of “rent” in section 52(2) would apply: “an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.” A tenancy deposit will not originally have been paid as rent, but may subsequently be offset against arrears of rent, and so fall to be treated as having been paid as rent. It would, of course, be necessary for both limbs of section 44(2) to be satisfied. I heard no argument on how they would be applied to a deposit treated by section 52(2) as having been paid as rent, so I say nothing about that issue.

35. The reference to section 52(2) relates to the 2016 Act, which reads:

For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.

36. The tenants in *Kowalek* brought a second appeal in which the Upper Tribunal’s comments regarding the treatment of a deposit were not raised. As regards a payment of rent made in respect of the period in which the offence was being committed, but which is paid outside the period itself, the Court of Appeal stated:

In all the circumstances, I agree with the Deputy President that the maximum amount of a rent repayment order must be determined without regard to rent which, while it might have discharged indebtedness which arose during the period specified in section 44(2), was not paid in that period.

The Hearing

37. As stated, the remitted hearing was on 31st January 2025. The Applicants did not attend the hearing.

38. The parties did not request an inspection of the Property by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.

39. The Tribunal was provided with a 96-page combined bundle containing both the Applicants' and the First Respondent's documents, including the following:

- 39.1 The First Respondent's statement of case regarding utility bills dated 7th November 2024;
- 39.2 The First Respondent's statement of case regarding his financial circumstances dated 7th November 2024;
- 39.3 The First Respondent's statement of case regarding the determination of the amount of the award dated 7th November 2024;
- 39.4 The First Respondent's spreadsheets relating to the Applicants' rent payments;
- 39.5 The First Respondent's summary bank statements for his "Reward Account" for November 2021, December 2021, January 2022, February 2023, July 2024, August 2024 and September 2024;
- 39.6 He also provided summary bank statements for his "Current Plus" account for August 2024 and September 2024;
- 39.7 Notifications from the First Respondent's bank regarding the amount of interest paid on his overdraft on two occasions;
- 39.8 The First Respondent's response to the Applicants' rent schedule and their statement of case dated 20th December 2024, plus exhibits;
- 39.9 The Applicants' record dated 22nd November 2024 of the total amount of rent paid; and
- 39.10 The Applicants' response to the First Respondent's financial circumstances dated 28th November 2024, together with the results of their internet search regarding the Property's estimated value and information regarding local sales.

40. The parties also submitted the following:

- 40.1 A 4-page skeleton argument on behalf of the Applicants dated 31st January 2025;
- 40.2 The First Respondent's letter to the Tribunal dated 31st January 2025;
- 40.3 A 3-page skeleton argument from the First Respondent dated 31st January 2025.

41. The First Respondent wanted the Tribunal to address the question of the amount of rent paid by the Applicants. In particular, whether the whole of the rent used to calculate the Third Applicant's rent repayment order should include the £250 which the county court had determined was a deposit.

42. Ms Hoxha, on behalf of the Applicants, objected to the First Respondent pursuing this argument. Firstly, she claimed the Original Decision had already determined the whole of the rent, which in the First Applicant's case was £3,500, being £125 per week rent x 28 weeks in occupation. Secondly, Ms Hoxha argued, the First Respondent had not previously raised this argument, making it unjust for him to now pursue it.
43. The First Respondent stated he should be allowed to pursue the argument because it relied on the findings of the section 214 county court deposit proceedings, which were determined after the Upper Tribunal's decision. Secondly, he argued, that he had raised the point in his statements of case.
44. After taking some time to consider the parties' submissions, the Tribunal concluded it was in the interests of justice to allow the First Respondent to pursue his argument regarding the £250 paid by the Third Applicant. In our judgment, at the date of the original First-tier Tribunal hearing, and the Upper Tribunal appeal hearing, the status of the £250 was unknown: the Third Applicant still had an outstanding deposit claim in respect of the sum, while the First Respondent claimed it was rent in advance. However, by the date of the remitted final hearing, that issue had been resolved, with the county court finding the sum was paid as a deposit. We consider that development should not be ignored, so the First Respondent should be allowed to raise relevant arguments within these proceedings that are relevant to the county court's finding.
45. Furthermore, we agree that the First Respondent had raised the issue prior to the final hearing, including at paragraphs 11 to 15 of his statement of case regarding the determination of the amount of the award dated 7th November 2024.

The Issues

46. In light of the Original Decision and the Upper Tribunal's decision on appeal, we have identified the issues for determination as follows:
- 46.1 The whole of the rent paid during the period of the offence;
 - 46.2 Whether the £250 paid by the Third Applicant, which the county court found was a deposit, should be included when calculating the whole of the rent she paid;
 - 46.3 What amount should be deducted for utilities;
 - 46.4 Consider how serious the offence was in order to arrive at a starting point for the amount of the rent repayment order, including the findings made in the Original Decision regarding the parties conduct, including the First Respondent's conduct;
 - 46.5 Finally, the factors which we are required to have regard to by section 44(4) of the 2016 Act, namely:
 - (i) The parties' conduct, based on the findings in the Original Decision;

- (ii) The First Respondent's financial circumstances; and
- (iii) Whether the First Respondent has previously been convicted of a relevant offence.

The Tribunal's Approach

47. The Tribunal reached its decision after considering the parties' written evidence and the First Respondent's oral evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence and documentation provided by the parties.
48. As appropriate, and where relevant to the Tribunal's decision the evidence is referred to in the reasons for the Tribunal's decision.
49. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
50. The relevant legal provisions are set out in the appendix to this decision.

The offence under section 72(1) Housing Act 2004

51. We adopt the findings in the Original Decision which found that the Applicants had proved beyond a reasonable doubt that the First Respondent had committed an offence under section 72(1), without reasonable excuse, during the period from 11th October 2019 to 24th April 2020.

Amount of the Rent Repayment Order

52. In fixing the appropriate sum the Tribunal had regard to the guidance in *Acheampong v Roman*, being the Upper Tribunal's decision on appeal against the Original Decision (see paragraphs 24 to 26 above). We have also taken into account that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of the licensing system and to deter evasion.

The Whole of the Rent Paid

53. In their letter dated 22nd November 2022, the Applicants simply restate the amounts originally claimed by them. So, the First Applicant claimed £5,670 for 45 weeks, the Second Applicant claimed £3,875 for 31 weeks, and the Third Applicant claimed £3,500 for 28 weeks. However, the Original Decision found the period of the offence was 11th

October 2019 to 25th April 2020, being a period of 28 weeks. It means the First, Second and Third Applicants should each have paid £3,500 during the period of the offence. It is common ground that the First and Second Applicants did in fact pay that sum.

54. As to the Third Applicant, she states that she is entitled to include the £250 paid on 26th October 2019, even though the county court determined that it was paid as a deposit. If that sum is included, it would mean the total amount paid during the period of the offence was £3,500. Ms Hoxha argued that irrespective of whether it was originally paid as a deposit, because it was used to discharge rent that fell due during the period of the offence, it should be included when calculating the whole of the rent the Third Applicant paid.
55. The First Respondent argues the Third Applicant cannot pursue contradictory arguments, by claiming the £250 was paid as a deposit in the county court proceedings, but arguing it was paid as rent in these proceedings. Furthermore, as the county court found the payment was made as a deposit, and a rent repayment order is made in respect of sums paid as rent, the £250 cannot be included.
56. As stated, the Respondent relies on the Court of Appeal decision in *Kowalek*. However, we do not consider that supports his position. While the Court found that to be included in a calculation of the whole of the rent the payment must be made during the period the offence was committed, the evidence the First Respondent referred us to shows the £250 was debited from the Third Applicant's bank account on 26th October 2019. That is during the period the offence was being committed.
57. Furthermore, having regard to section 52(2) of the 2016 Act, we consider that in this case the deposit can be included when calculating the whole rent for the following reasons:
 - 57.1 The entirety of the Third Applicant's occupancy coincides with the period during which the offence was committed. Therefore, as the documentary evidence that the First Respondent referred us to shows the payment was made during the relevant period. And the payment must have been made in respect of rent due during the period of the offence, both limbs of section 44(3) are satisfied.
 - 57.2 There is no difficulty applying those facts to this case because although a deposit is commonly paid before a tenancy begins, in this case, the Third Applicant paid the sum around two weeks after her tenancy began.
 - 57.3 By section 52(2), even though the Third Applicant claimed the sum was paid as a deposit, and the county court found that to be the case, because it was used to discharge rent that fell due

during the period of the offence, it is to be regarded as rent for the purposes of these proceedings.

What Amount is to be Deducted for Utilities

58. The First Respondent claims to have paid £980.60 for utilities during the relevant period. Ms Hoxha accepted that sum was appropriate. Therefore, as the sum was not disputed, there was no need to ascertain whether the water was charged as water rates or metered.

59. Regarding utilities, the dispute between the parties was whether $\frac{1}{4}$ of the £980.60 should be deducted from the award made in favour of each of the First, Second and Third Applicants, as they argued. Their position was that between them, they had the benefit of $\frac{3}{4}$ of the utilities. However, the First Respondent argued it was a shared flat, the cost of utilities was not divided on a room-by-room basis, and £980.60 reflects the actual amount he had paid out for utilities. Therefore, he maintained that $\frac{1}{3}$ £980.60 should be deducted from the rent repayment order made in favour of the First, Second and Third Applicants.

60. We agree with Ms Hoxha that the appropriate deduction is £245.15 from each rent repayment order, which represents $\frac{1}{4}$ of the total £980.60 cost of utilities during the relevant period. Having regard to the Upper Tribunal's decision in *Acheampong v Roman*, the purpose of making a deduction for utilities is as follows (see paragraph 20(b)):

Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access.

61. Each Applicant is likely to have only benefited from around $\frac{1}{4}$ of the total cost of the utilities, which makes that an appropriate deduction. To deduct $\frac{1}{4}$ rather than $\frac{1}{3}$ from the individual rent repayment orders, more appropriately reflects the benefit each Applicant has had from the utilities.

The Section 44(4) Factors

62. As stated, we adopt the findings regarding the conduct of the parties as set out in the Original Decision. In summary, it concluded that there was good conduct on the part of the First, Second and Third Applicants as well as the First Respondent. It did not dispute the First Respondent's account that he committed the offence out of ignorance, rather than due to a wilful disregard of the HMO licensing requirements. The Original Decision also confirms there is no evidence the First Respondent has been prosecuted.

63. As to the First Respondent's financial circumstances, the documentary evidence he provided is set out at paragraphs 39.5 to 39.7 above. The statements relating to the First Respondent's Reward Account and

Current Plus account are summary statements, so they do not provide evidence regarding his income or expenditure. They simply show the total credit paid into, and debits paid out of, the account during that particular month. Although the First Respondent referred to being in overdraft, he did not provide any evidence of how much he was overdrawn, and we note the documentary evidence of his overdraft relates to two occasions.

64. It is common ground that the First Respondent purchased the Property in 2008. The Applicants state the Property was purchased for £211,000, and they rely on sales evidence of similar local properties to argue its current value is between £368,000 to £453,000. Therefore, they argue, the First Respondent has considerable equity, which is relevant to his financial circumstances. The First Respondent's response is that the Property is co-owned with the Second Respondent, therefore he only has a 50% share of any equity, and he points out that he can only realise that equity by selling. He also considers the Applicants' evidence regarding the equity is inflated, although he provided no estimated value himself.

65. Although the First Respondent provided no evidence regarding his earned income, he stated he earns "a good income." His evidence that he no longer receives any rental income was not challenged during the hearing.

66. The First Respondent has provided some documentary evidence regarding his financial circumstances, but there is no specific information regarding his estimate of the equity in the Property, or of his income or outgoings. On that basis, we consider the Applicants' evidence regarding the value and likely equity in the Property is of assistance. Even at the lowest value of £368,000, the First Respondent's 50% share of the equity would exceed £70,000. Combined with his acceptance that he earns a good income, leads us to conclude that the evidence we have of his financial circumstances does not justify a reduction in the amount of the rent repayment order.

Conclusion

67. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that we consider should be made in light of factors to which we must have regard under section 44(4) of the 2016 Act, we make a rent repayment order against the First Respondent in the total sum of £5,250, which represents 50% of the rent paid by the First, Second and Third Applicants during the relevant period.

68. The Tribunal would remind the parties that it does not have the power to order the payment of the rent repayment order. It can only determine the amount of the rent repayment order.

Name: Judge Tueje

Date: 19th March 2025

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

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

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

Appendix of Relevant Legislation Housing Act 2004

72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if–
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if–
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary

conviction to a fine not exceeding level 5 on the standard scale.

- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are–
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord 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 to that landlord.

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

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

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

43 Making of a rent repayment order

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

44 Amount of order: tenants

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

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

