FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AL/HMG/2026/0045**
Property	:	**6 St Merryn Close London SE182RF**
Applicants	:	**Gavin Plenderleith and Tracy Morris**
Representative	:	**In person**
Respondent	:	**David Peter Bezer**
Representative	:	**Miss B Zeitler (Counsel)**
Type of application	:	**Application for a rent repayment order by tenant** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge Moate; Ms Kershaw BSc**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of order	:	**27 October 2026**

ORDER

Introduction

1. The Tribunal is asked to make a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016 ("HPA 2016").

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

The Application

3. On 02 February 2026 the Tribunal received an application under s41 of the Housing and Planning Act 2016 ("the Act") from the Applicant tenants for a rent repayment order ("RRO").

4. It is asserted that the landlord committed an offence under s95(1) of the Housing Act 2004 of having control of or managing a house that was required to be licensed but was not so licensed. The Applicants seek a RRO for the period 1 January 2024 to 30 December 2024, in the sum of £15,843.83 (as amended pursuant to the Applicants' statement of case).

5. The Applicants contend that they were joint tenants of the Property during 2024 and paid rent to Goodwin Ellis as managing agent. They assert that the Property is situated within the Royal Borough of Greenwich which was subject to a selective licensing designation pursuant to Section 80 of the Housing Act 2004. The scheme, which came into effect on 01 October 2022 for a period of 5 years, mandates that all privately let properties within designated areas must be licensed unless exempt by statute.

6. The tenancy agreement which commenced on 03 June 2023 for a period of 12 months specifies a rent of £1,250 per month. The tenancy agreement which commenced on 03 September 2024 for a period of six months specifies a rent of £1,350 per month. The Applicants allege that the total payment amount of £15,843.83 is made up as follows: eight payments of £1,250, four payments of £1,350 and a bridging payment of £443.83 when the rent payment date changed.

The Issues

7. On 28 May 2026 directions were given in this matter by Judge Shepherd, amended by Judge Dutton on 05 August 2026.

8. The issues for the Tribunal are as follows:

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

(2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.

(3) Did the offence relate to housing that, at the time of the offence, was let to the tenant?

(4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

(5) What is the maximum amount that can be ordered under section 44(3) of the Act?

(6) Whether any conduct relied upon in the defence, even if not enough to establish a reasonable excuse, nevertheless justifies a reduction in the amount of the penalty to be imposed. What account must be taken of:

(a) The conduct of the landlord?
(b) The financial circumstances of the landlord?
(c) Whether the landlord has at any time been convicted of an offence shown above?
(d) The conduct of the tenant?
(e) Any other factors?

The hearing

9. The hearing was held at a face-to-face hearing on 19 October 2026. In attendance were the following people:

- Applicant: Gavin Plenderleith (Tracy Morris did not attend)

- Respondent's representative: Ms Zeitler (counsel)

- Respondent's solicitor: Ms Komorowska

- Respondent: David Bezer

10. The Tribunal asked if either party needed any special arrangements or reasonable adjustments to participate in the hearing, to which both parties responded that they did not.

11. The Tribunal had received an Applicants' and a Respondent's paginated bundle, the Applicants' Reply to the Respondent's bundle and a supplementary witness statement from Tracey Morris which included an attached bank statement. Both parties had filed witness statements and skeleton arguments.

The preliminary application

12. Late afternoon on 16 October 2026, the day before the hearing, the Applicant had filed further documents upon which he sought to rely, along with an Order 1 form seeking the Tribunal's permission. The Respondent opposed the application.

13. The Tribunal dealt with the Applicants' application to adduce further evidence first. Mr Plenderleith said that he had made this application following receipt of the Respondent's skeleton argument as he considered there were further documents which supported his claim relating to the condition of the Property. He accepted that the Respondent's skeleton argument had not itself raised additional evidence.

14. In response, Ms Zeitler submitted that the application was extremely late and would prejudice Mr Bezer as he had not had any opportunity to respond. She said these were matters which formed part of the Applicants' disrepair claim and were not relevant to the RRO, although she conceded that the condition of the Property could be taken into account when considering landlord conduct.

The Tribunal's decision on the preliminary application

15. The Tribunal refused permission for the Applicants to rely on the further evidence included in their application dated 16 October 2026. The Tribunal considered the overriding objective to deal with cases fairly and justly. The Tribunal determined that a) the Applicant had already been afforded an opportunity to disclose any documents upon which he sought to rely both via his bundle and his Reply to the Respondent's bundle and there was no good reason why they could not have been provided then, and b) it would be unfair to allow the Applicant to rely upon further documents at such a late stage given the Respondent had no opportunity to respond.

16. Mr Plenderleith was content to continue without reference to the additional documents and did not seek an adjournment.

The RRO Application

17. The Tribunal established, in consultation with both parties, which aspects of the application which were not in dispute. The parties agreed that:

a) There was a selective licensing scheme in place in the Royal Borough of Greenwich as alleged by the Applicants.

b) The Property remained unlicensed until 26 February 2025 when the Respondent applied for a licence.

c) The amount of rent paid during the relevant period between 01 January 2024 and 31 December 2024 was £15,843.83 as alleged by the Applicant.

d) The RRO application was made on 02 February 2026.

18. The Tribunal heard from both parties and made the determinations set out below.

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

19. The Tribunal is satisfied beyond reasonable doubt that the property was required to have a licence from 01 October 2022 onwards under the Royal Borough of Greenwich's Selective Licensing Scheme, but was not so licensed.

20. The Tribunal is also satisfied that the Respondent was at all material times a person having control of the premises, being in receipt of the rack rents for the Applicants' occupation of the property during the relevant period.

21. Given the Respondent's admissions and the parties' evidence, the Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) Housing Act 2004.

(2) Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it?

22. Ms Zeitler conceded that the Respondent's defence of "reasonable excuse" was weak. Mr Bezer readily admitted that his managing agent had told him he needed to obtain a licence for the Property but he had failed to do so due to an inadvertent oversight. He explained in his witness statement that during that period he was working 5-6 days a week and then travelling to his elderly parents at weekends to help with their care. His mother passed away in January 2023 and his son went through a divorce in 2022 which put a strain on him financially; it was a difficult time for him.

23. The Tribunal considered the matters raised by the Respondent in mitigation and found that although they helped in explaining his failure to obtain a licence, none amounted to a defence of reasonable excuse.

(3) Did the offence relate to housing that, at the time of the offence, was let to the tenant

24. The Respondent admitted that the property was let to the Applicant at the time of the offence, from 03 June 2023 until November 2025. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the property was let to the Applicants during the period of the offence.

(4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

25. The offence was committed from 01 October 2022 until 26 February 2025. The RRO Application was brought on 02 February 2026.

26. Accordingly, the Tribunal finds that the offence was being committed within the period of 12 months ending with the date of the application.

(5) What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

Discussion and evidence

27. By section 44(2) of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period not exceeding 12 months during which the landlord was committing the offence.

28. The parties agreed the rental sum paid during this period was £15,843.83. Neither party alleged there was any bill payment to be deducted from that amount.

29. By section 44(3) of the 2016 Act, 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.

30. In her witness statement dated 22 July 2026, Ms Morris stated as follows: "Half of the rent was paid or funded through Housing Benefit. I understand that we cannot claim the Housing Benefit-funded half. I agree with the conservative deduction of £7,921.92 and the tenant-funded maximum of £7,921.91.

31. In his witness statement in response dated 09 September 2026, Mr Bezer stated that he was aware that the Applicants were in receipt of Housing Benefit and later Universal Credit with an amount attributable to their housing costs. He explained that Universal Credit was paid direct to the Applicants who then paid his managing agent, Goodwin Ellis. He stated: "*I have not seen Universal Credit statements or award notices produced by the Applicants showing the housing cost element actually received during the relevant period. I assume they intend to contact DWP who could easily provide details of this to them ahead of the hearing*".

32. Mr Bezer attached an email from Tracy Morris to Goodwin Ellis dated 02 May 2024 when a rent increase from £1,250 to £1,350 was being proposed which stated: "*We are on housing benefit and they do not pay the full rent for us, we make up £152 every month to pay this rent already. When I advise them of the increase, they will not pay the full amount so we'll have to make up more of the difference ourselves again*".

33. In a supplemental witness statement dated 08 September 2026, Tracy Morris stated:

> *3. Paragraph 6 of my witness statement states that half of the rent was paid or funded through Housing Benefit. My Authority also states that 50% of the rent was funded by Housing Benefit.*
>
> *4. I now confirm that the 50% figure was incorrect.*
>
> *5. The 50% figure was not taken from an official Housing Benefit award statement, payment schedule or verified Housing Benefit record.*
>
> *6. I have been referred to my contemporaneous email to Goodwin Ellis dated 2 May 2024. In that email I stated that, when the monthly rent was £1,250, Housing Benefit did not cover the full rent and that we had to make up £152 each month ourselves.*
>
> *7. I accept that the contemporaneous email is inconsistent with the later statement that only 50% of the rent was funded through Housing Benefit.*
>
> *8. I therefore withdraw the 50% figure and ask the Tribunal not to rely upon it.*
>
> *9. I do not seek to replace the 50% figure with another estimated figure because I do not presently have the documentary evidence necessary to verify the precise historic Housing Benefit payments throughout the whole relevant period.*

10. The Barclays account from which I made the rent payments to Goodwin Ellis has since been closed.

11. I do not presently have the complete historic Housing Benefit award statements or payment records for the relevant period.

12. I am therefore unable to confirm from documentary evidence the precise amount of Housing Benefit paid throughout the entire 2024 period.

13. I am also unable to confirm from documentary evidence whether Housing Benefit was paid directly into my Barclays account. I do not wish to speculate about that issue.

34. Attached to that statement was a heavily redacted Barclays bank statement in the name of Ms Morris which showed a payment of Universal Credit from the DWP in the sum of £198.31 on 12 September 2026, £1,234.99 on 13 September 2026 and £1,370.46 on 20 September 2026 (total £2,803.76).

35. In oral evidence, Mr Plenderleith said that he did not know how much universal credit had been paid in respect of rent under the tenancy and he had been unable to find out. He said that Tracy Morris had received limited Housing Benefit and that he remembered that they had not received Housing Benefit at the start because he had been a student at that time.

36. Mr Plenderleith explained that upon eviction from the Property he and Ms Morris had made a homelessness application to be housed together and had been placed in temporary accommodation. They had since separated and were living separately within their temporary accommodation whilst pursuing separate housing applications with the local authority. He said that because they had no photo ID/passports and no proof of address they had been unable to access their Housing Benefit information either from the local authority or through their joint bank account, which was closed.

37. When asked whether the Applicants had made a Subject Access Request to the local authority to obtain the history of his and/or Ms Morris' Universal Credit and Housing Benefit payments, Mr Plenderleith responded that he did not think about that and that he had not gone down that route. He acknowledged that the Applicants had made a Freedom of Information Act request of the local authority about the Respondent's licence application and a SAR request of Goodwin Ellis to obtain the Property inspection reports.

38. Mr Plenderleith then made an oral application to adjourn the hearing so he could obtain the relevant benefits documentation. He said he was not speaking to Ms Morris but he wanted to trace the historical records. He said that he was not relying on the supplementary statement of Ms Morris and that he wished

to withdraw that statement. He said the Universal Credit did not just cover housing elements, and he could not tell what the housing elements were. He said that the family received other benefits, including PIP.

39. Ms Zeitler responded that the Applicants knew they needed to provide their benefits information and had had ample time to provide it. She referred to the inconsistent statements of Ms Morris and challenged Mr Plenderleith's withdrawal of Ms Morris' Supplemental witness statement. She submitted that the Applicants had been unable to establish the amount of the benefit funded part of their claim and that an adjournment at this stage would cause delay and significant prejudice to Mr Bezer. She submitted that both the application to adjourn and the application itself should be dismissed.

40. In response, Mr Plenderleith said he would not be able to obtain the documents in support and withdrew his oral application to adjourn the hearing. He said he could only give a "guessed" amount of Housing Benefit received and stated that the family also received other benefits, including PIP.

The Tribunal's decision on maximum amount

41. The Tribunal finds that the Applicants were fully aware from at least 09 September 2026 of the need to obtain documentary evidence in support of their RRO application to show the relevant housing element of their Universal Credit. The lack of supporting documentation and the need to provide the same was highlighted in Mr Bezer's witness statement and the question of Universal Credit was addressed in both of Ms Morris' statements. The Tribunal notes that the Respondent is unable to obtain this information.

42. The Tribunal finds that even if the Applicants do not have photographic ID, they could have used other means to obtain the relevant supporting documentation. During these proceedings the Applicants have successfully made a Freedom of Information Act request of the Royal Borough of Greenwich to ascertain the date of the Respondent's licence application and a Subject Access Request of Goodwin Ellis to disclose the inspection reports at the Property. They have also made a successful local authority homelessness application. The Tribunal finds that the Applicants are familiar with the methods of obtaining relevant information and had ample time to do so.

43. The Tribunal further finds that the witness evidence from Ms Morris about the housing element of their Universal Credit award is unreliable. Ms Morris' statement dated 22 July 2026 says "housing benefit" covered 50% of the rent amount, although she accepts is not based on any documentary evidence. She subsequently revokes that percentage in her second witness statement. Mr Plenderleith's oral evidence was that he did not know how much of the rent was covered by housing benefit during the relevant period and that he could only "guess".

44. In the absence of documentary evidence of the housing element of Universal Credit, the Tribunal must determine the issue on the evidence available. The Tribunal finds that the most reliable evidence is the contemporaneous email from Ms Morris dated 2 May 2024 to Goodwin Ellis which suggests that "housing benefit" (which the Tribunal understands to mean the housing element of Universal Credit) covered circa 87.84% (£1,250 - £152) of the rent. The Tribunal takes those figures £1,250 - £152 = £1,098 (which represents 87.84%) and applies that across the period of claim.

45. The calculation is therefore as follows:

Date	Rent paid	Less Universal Credit (housing element)	Maximum recoverable
3 January	£1,250	£1,098	£152
5 February	£1,250	£1,098	£152
5 March	£1,250	£1,098	£152
3 April	£1,250	£1,098	£152
8 May	£1,250	£1,098	£152
5 June	£1,250	£1,098	£152
3 July	£1,250	£1,098	£152
5 August	£1,250	£1,098	£152
3 September	£1,350	£1,185.84	£164.16
2 October	£443.83	£389.86 (87.84%)	£53.97
14 October	£1,350	£1,185.84	£164.16
13 November	£1,350	£1,185.84	£164.16
13 December	£1,350	£1,185.84	£164.16
TOTAL	**£15,843.83**	**£13,917.22**	**£1,926.61**

46. The Tribunal determines that the maximum amount recoverable is **£1,926.61.**

What account must be taken of the matters in s.44(4) or any other factors?

Discussion and evidence

47. Ms Zeitler argued that the Applicants' conduct should be taken into account in reducing any award made because a) they accrued £2,700 in rent arrears which resulted in a mandatory possession order being made, b) they had caused damage to the Property (e.g. damage to electrical sockets) and c) they had conducted themselves inappropriately in the proceedings by not disclosing their benefits information. Ms Zeitler was unable to refer the

Tribunal to any authority which allowed conduct during proceedings to be taken into account as "tenant conduct".

48. Mr Plenderleith opposed these submissions on the basis that he disputed the rent arrears (although he accepted the County Court had made a mandatory possession order based on 2 months' arrears) and that even if the Applicants had accidentally caused damage to the sockets, they had carried out significant decorative and other works at the Property and hired builders to carry out the repairs.

49. Mr Plenderleith argued that the Respondent's conduct should be taken into account in reducing any award made because a) the Respondent had applied for a licence then served a notice to terminate the tenancy, b) there was disrepair at the Property (for which there were ongoing disrepair proceedings in the County Court) including no bathroom for 2 months and numerous defects as identified in the inspection reports dated 15 March 2018 and 11 March 2022, which he says were not resolved, and c) the Respondent had failed to disclose the Property inspection documents until the Applicant undertook a Subject Access Request.

50. In reply, Ms Zeitler submitted that the Respondent had undertaken all necessary gas safety and electrical checks as evidenced by the certificates in the Respondent's bundle, and that the Property inspection reports demonstrated the landlord was actively checking the state of the Property and reacted to repair issues raised. She said that no remedial works had been required by the Royal Borough of Greenwich before granting a licence, although she accepted that they had not undertaken an inspection.

51. Ms Zeitler submitted that the Respondent did not own any other rental properties, that they no longer received any income from the Property as it was not rented out and that his and his wife's only income was their state pensions. Mr Bezer did not provide any documentary evidence in support of his financial situation.

<u>The Tribunal's decision on the s.44(4) factors</u>

52. The Tribunal is guided by the approach outlined at paragraph 20 of the decision in *Acheampong v Roman* [2022] UKUT 239 (LC) which states as follows:

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).

53. Applying section 44(3), the maximum amount recoverable is £1,926.61.

54. In respect of the seriousness of the offence, compared to other types of offence for which a RRO may be made, the failure to procure a licence under a selective licensing scheme is at the lower end of the range of seriousness. More serious offences include unlawful eviction or harassment and breach of a banning order.

55. However, within its own category of a licensing offence under s95(1), the Tribunal finds that the offence is towards the middle-lower end of the range of seriousness. The Tribunal's reasoning is as follows.

56. The Tribunal finds that although the Respondent was made aware of the licensing requirement by his managing agent, the failure to obtain a licence was not deliberate. The Tribunal takes into account that Mr Bezer was contending with various competing work and family issues at that time and accepts his evidence that it was an oversight. However, the Tribunal also takes into account that Mr Bezer did not do anything about the licensing breach until February 2025, two and a half years after the commencement of the licensing scheme, when he was reminded by his managing agent that the Property needed a licence. The Tribunal notes Mr Bezer's contention that he does not rent out any other property; there is no evidence to suggest he is a professional landlord.

57. Given the length of the breach and considering the examples in paragraphs 48-56 of the decision in *Newell v Abbott* [2024] UKUT 181 (LC), the Tribunal

considers that a starting point of 45% appropriately reflects the seriousness of the offence itself before taking account of the additional factors set out in section 44(4) of the 2016 Act.

58. The Tribunal finds that the only conduct issue to which weight should be attached under section 44(4) of the 2016 Act is the Applicants' 2 months' rent arrears which arose in 2025. The Tribunal cannot go behind the possession order of the County Court which Mr Plenderleith admitted was made based on 2 months' rent arrears and which has not been appealed. The Tribunal takes into account that these arrears arose after the Respondent served notice to terminate the tenancy, that Mr Plenderleith subsequently paid back £100 and that the deposit has not yet been returned. The Tribunal finds that a reduction of 5% from the starting point is appropriate to reflect the Applicants' conduct under section 44(4)(a).

59. The Tribunal finds that the repair and inspection documents disclosed within these proceedings do not demonstrate that the Respondent failed to deal with repairs but rather that repairs were required over the course of the tenancy. Equally, the Tribunal finds that the evidence does not show poor tenant conduct with respect to property damage. The Tribunal finds that the service of a valid notice to terminate the tenancy does not amount to landlord conduct which should be taken into account in determining the amount of any award made.

60. Finally, the Tribunal finds that the Respondent has not provided any documentation in support of his financial circumstances such that the Tribunal would be able to take this into account when considering any RRO award.

61. The Tribunal notes that the landlord has not been convicted of an offence under Chapter 4 of the Housing and Planning Act 2016.

62. **The Tribunal therefore determines that the appropriate rent repayment order is 40% of the maximum amount recoverable, namely £770.64.**

Conclusion

63. The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicant the total of £770.64 within 35 days of this decision.

64. The Tribunal notes that the Applicants did not pay an application or hearing fee therefore no order is made in this regard.

Post-hearing submissions

65. After the hearing, the Applicants sent to the Tribunal several emails (without an Order 1 form) attaching further documentation and submissions for the Tribunal to consider. The Respondent sent emails in response, opposing the inclusion and/or consideration of such material post-hearing. The Tribunal has made a separate decision in which it refused to give permission to adduce any further post-hearing submissions or evidence, the reasons for which are set out in that decision.

Judge J Moate

Date: 27 October 2026

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. 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.

3. If the application is not made within the 28-day time limit, such application must include a request to 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.

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

Appendix 1

Housing and Planning Act 2016 Section 40

(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 …

(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 of management of an unlicensed house
7) This Act	Section 21	Breach of a banning order

Section 41

(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.

Section 43

(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 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) …

Section 44

(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.

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) **...**

(3) **...**

(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.

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.

(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.

S.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 2-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.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

"4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [Housing] Act [2004] if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.