FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KG/HMF/2022/0018**
HMCTS Code	**:**	**V:CVP REMOTE**
Property	**:**	**2 High Street, Purfleet, Essex RM19 1QB**
Applicant	**:**	**Brendan Francis Cavanagh**
Representative	**:**	**Unrepresented**
Respondent	**:**	**Shahidul Islam**
Representative	**:**	**Ms S. Aktar (Solicitor)**
Type of application	**:**	**Application for Rent Repayment Order under section 41 Housing and Planning Act 2016**
Tribunal members	**:**	**Judge K. Saward** **Mr J. Francis QPM**
Date of hearing	**:**	**16 November 2022**
Date of decision	**:**	**23 November 2022**

DECISION AND REASONS

Description of hearing

This has been a remote hearing consented to by the parties. The form of remote hearing was CVP Video. The Applicant provided electronic copies of the documentation relied upon. When printed, this comprised some 188 pages. Additionally, the Tribunal had a copy of the application form and Directions issued by the Tribunal on 11 July 2022. The Respondent's updated bundle is 19 pages. The Tribunal has noted the content of all these documents. The relevant legislative provisions are set out in an Appendix to this decision.

Decisions of the Tribunal

(1) The application to strike out the proceedings made under rule 18(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the FTT Rules") is refused.

(2) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

(3) The Tribunal is not satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 1(3A)(a) of the Protection From Eviction Act 1977 ("the 1977 Act").

(4) The Tribunal has determined that it is appropriate to make a rent repayment order ("RRO").

(5) The Tribunal makes a RRO against the Respondent in favour of the Applicant in the sum of £2,310.00, to be paid within 14 days.

The application

1. On 26 June 2022, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a RRO. The Applicant rented a room in the property at 2 High Street, Purfleet, Essex which he claimed had been found by Thurrock Council to be an unlicensed house in multiple occupation ("HMO").

2. At the start of the hearing, the Applicant clarified that he was not only pursuing a RRO on the basis of an offence under section 72(1) of the 2004 Act but also for an offence by the Respondent for acts of harassment, as landlord and by his affiliates, under section 1(3A) of the 1977 Act.

The hearing

3. The hearing took place remotely using the CVP platform. Due to illness, the Respondent was unable to attend and produced a sick note. However, his Solicitor was present who confirmed that the Respondent wished the hearing to proceed in his absence.

4. The Applicant had attempted to produce video evidence but this was not in an accessible format. It is not therefore before the Tribunal. Nevertheless, the Applicant had taken the opportunity to provide some typed commentary and was afforded opportunity to elaborate.

5. The Respondent's bundle included a copy of a signed "Settlement Agreement" entered into between the Applicant and Respondent on 3 July 2021 (the "Settlement Agreement"). In reliance of this document, the Respondent pursued an argument that the proceedings should be struck out. Both parties were given opportunity to make representations on this matter as required by FTT Rule 9(4). It was agreed that the Tribunal would hear the whole case and deal with the issue of strike out as a preliminary matter within this written Decision.

6. As the Respondent was absent and the Applicant was unrepresented, the Tribunal took the approach of hearing arguments from each side in relation to each of the issues in dispute. Both the Applicant and the Respondent's Solicitor answered questions from the Tribunal.

The Tribunal's determination

7. The Tribunal has considered the application in five stages –

   (i) Whether the application should be struck out in light of the Settlement Agreement of 3 July 2021.

   (ii) Subject to the above, whether the Tribunal is satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act and/or section 1(3A) of the 1977 Act.

   (iii) Whether the qualifying criteria is met.

   (iv) Whether the Tribunal should exercise its discretion to make a RRO.

   (v) Determination of the amount of any RRO.

The Settlement Agreement

8. Under FTT Rule 9(3)(d) the Tribunal may strike out the whole or part of proceedings if it considers them, or the manner in which they are conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal. The Respondent considers there to be an abuse of process in the Applicant bringing the RRO application in light of the Settlement Agreement.

9. The terms of the Settlement Agreement provide that the Respondent agreed to pay the sum of £1,300 to the Applicant to surrender his tenancy and vacate the property with immediate effect and upon provision by the Applicant of a signed written surrender of tenancy.

10. A further term provides that "*The tenant (Brendan Francis Cavanagh) agrees to relinquish his statutory rights to seek any compensation via legal process in relation to the above property, including to the Residential Property Tribunal for a Rent Repayment order requiring the repayment of any rent paid.*"

11. The Settlement Agreement also states that "*The landlord's agent (Mr Shahidul Islam) agrees to relinquish his rights to make any further claims in relation to the above property following the tenant vacating the above property*".

12. The Respondent's bank statement confirms the agreed sum of £1,300 was transferred to the Applicant's account on 3 July 2021. That same day, and on payment of those monies, the Applicant signed an agreement to terminate and surrender his tenancy whereupon the Applicant vacated the property. The Applicant acknowledges that he was paid the settlement payment.

13. The Respondent contends that the Applicant entered the Settlement Agreement without any pressure and in full knowledge and understanding of its terms and effect. As such, it is submitted that the Applicant should not be allowed "a second bite of the cherry". The Respondent's Solicitor argued that the Applicant's statutory right to apply for a RRO under section 41 of the 2016 Act was capable of being waived by agreement although she could not produce any legal authority in support.

14. The Tribunal notes that the Applicant had been very active in negotiating the terms of the Settlement Agreement. Negotiations had started at £750 with £500 paid to be paid first and the balance after departure. Agreement had initially been struck on £1,200 but the figure was increased by £100 to cover the Applicant's removal costs.

15. The Tribunal further notes that the Applicant messaged the Respondent by mobile phone at 15.45 on 25 June 2021 saying: "*…don't make me file a claim for all my rent when all you need to do is honour your word on my deposit for a flat and refund my rent for June*." Again, at 06.14 on 2 July 2021 the Applicant sent another message saying: "*The payment can be done and transacted upon my loading my stuff [in]to the van and then I will surrender my tenancy in writing to you upon moving out on that day and I sign your declaration waver [sic] about not claiming that back through the RRO….*".

16. It is clear from these messages that the Applicant understood what a RRO was and that he was being asked to waive his rights to pursue an application in return for the payment sought.

17. There is no indication from the text message trail that the Respondent wanted the Applicant to leave the HMO or pressurised him to do so.

18. The Applicant told the Tribunal that he was in a desperate situation, being on the verge of losing his job due to the time taken off work. He needed the money from the Respondent so that he could move out and pay a deposit for other accommodation. The Applicant said he had believed that the Agreement was not binding and had understood that he could still pursue a RRO.

19. The Respondent himself had drafted the Settlement Agreement. The Applicant had not taken legal advice prior to signing and there had been no offer to bear such costs by the Respondent. Instead, the Applicant had sought advice from the local housing authority.

20. The Applicant had sent the draft Settlement Agreement to the Council's Adults Health and Housing Team who replied by email at 08.43 on 2 July 2021 identifying it as a "*compromise agreement, asking you to leave the accommodation for a reimbursement fee.*". The email makes no further comment on the draft Agreement itself.

21. However, the Applicant had produced another email from the Council's Principal Environmental Health Officer (Private Housing team) sent 11.38 on 2 July 2021 which states: "*Just to summarise our call today – Any agreement between you and the landlord will be civil and overridden by your legal rights. Therefore you are free to make a Rent Repayment Order (RRO)"*. This response followed an email sent by the Applicant to the Council earlier that morning seeking assistance with a RRO application.

22. Section 49 of the 2016 Act provides that the local housing authority may help a tenant apply for a RRO and such help may include the giving of advice. Therefore, the Tribunal considers it reasonable for the Applicant to place reliance upon the advice he received from the Council. Whether the Council's email timed at 11.38 was sent by the Officer with the benefit of having read the draft Settlement Agreement is unclear. Nevertheless, the Tribunal accepts that the Applicant did rely upon that email in proceeding to sign the Settlement Agreement containing the clause aimed at relinquishing any rights to pursue a RRO. He was under the belief that the Agreement did not affect his statutory rights.

23. The Settlement Agreement was a contract between the parties but one entered by the Applicant under a misunderstanding of the possible legal implications. Moreover, there was imbalance in their positions given that the Applicant was a professional landlord. The Tribunal also notes that, by this time, the Council had already identified the property as an unlicensed HMO thereby increasing the likelihood of a RRO application against the Respondent. If he wished to prevent a RRO application then there was all the more reason to ensure the Applicant understood the implications of signing the Agreement whether through the benefit of legal advice or otherwise.

24. The Applicant argued that the Settlement Agreement was more about the loss of earnings he had endured due to the stress of living in the rented property due to the behaviour of some other tenants. He had specifically insisted on insertion of the words 'loss of earnings' in the Agreement he signed.

25. The Tribunal has a discretion whether or not to strike out the proceedings. Having regard to the overriding objective within FTT Rule 3(2) the Tribunal does not consider it fair and just to the Applicant to strike out the proceedings in these particular circumstances.

26. The application to strike out the RRO application should be refused.

Control or management of unlicensed HMO

27. The property contains 6 bedrooms. The Applicant occupied a room between 10 October 2020 to 3 July 2021. Rent was paid by the Applicant throughout that period. There were 7 residents in 5 of the rooms. One loft room was empty.

28. It is undisputed that throughout the entirety of the Applicant's occupation the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed. The Respondent's Solicitor also confirmed that the Respondent was convicted of an offence under section 72(1) of the 2004 Act in or around September 2022. He was fined £21,360 in respect of this property alone.

29. Accordingly, the Tribunal is satisfied beyond reasonable doubt that the Respondent committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the period from 10 October 2020 to 3 July 2021, contrary to section 72(1) of the 2004 Act.

Qualifying criteria

30. The offence was committed at a time when housing was let to the Applicant and in the period of 12 months prior to the application being made. The qualifying criteria within section 41 of the 2016 Act are met.

Harassment

31. Under section 1(3A)(a) of the 1977 Act, a landlord or his agent commits an offence if he does acts likely to interfere with the peace or comfort of the residential occupier, and he knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up his occupation or to refrain from exercising any right or

pursuing any remedy in respect of the whole or part of the premises. This is subject to any defence under section 1(3B).

32. The Applicant asserted that he was harassed by the Respondent and affiliates on his behalf during the last 2 weeks of his occupancy. He suggested that the acts included entry at the property on less than 24 hours' notice, persistent phone calls from the Respondent and confrontational behaviour from his brother.

33. A letter from Essex Police on 29 June 2021 confirms that the Applicant filed a complaint of harassment for which he has been given a Crime Reference Number. There are no details within the letter to glean if the complaint concerns his occupation of this property. The Applicant maintained at the hearing that a full statement and details were with the Council but that information is not before the Tribunal.

34. Text messages from the Applicant appear to indicate that he wanted to leave the property for other reasons besides any conduct of the Respondent. For instance, at 15.32 on 23 June 2021, the Applicant wrote "*I just want to break free from this house and will take you up on your offer of paying my deposit….*". The following day , he wrote "*I hop [sic] you understand that I want out….*" . Moreover, the Respondent stated clearly in a message to the Applicant on 3 July 2021 "*Look I am not asking you to leave Brendan. You wanted to leave the property ASAP.*"

35. Whilst the Applicant referred to typed summaries of the content of video footage within his bundle, this is not first-hand evidence. There is a lack of information. It falls far short of fulfilling the criminal standard of proof required.

36. In the circumstances, the Tribunal finds that there is insufficient evidence for it to be satisfied beyond reasonable doubt that the Respondent committed an offence under section 1(3A) of the 1977 Act.

Exercise of the Tribunal's discretion

37. Having found that the Respondent committed the offence of control or management of an unlicensed HMO, the Tribunal considers that this is a case in which it should exercise its discretion under section 43 of the 2016 Act to make an RRO in favour of the Applicant. In arriving at this decision, the Tribunal has considered that a financial settlement has been paid already to the Applicant. However, the Tribunal does not consider that is reason enough on which to refuse a RRO in this case when the ground is made out.

The amount of the Order

38. Whilst the Respondent has been convicted of an offence, it is not one of the offences mentioned in section 46 of the 2016 Act where the amount of the RRO is to be the maximum that the Tribunal has power to order. Section 46 does not apply.

39. Section 44 of the 2016 Act provides that where the Tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Sub-paragraph 44(2) provides that in a case concerning an offence under section 72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. The relevant period here is 10 October 2020 to 3 July 2021.

40. Sub-section 44(4) provides that in determining the amount of the RRO, 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 the Chapter applies.

Relevant caselaw

41. *Williams v. Parmar* [2021] UKUT 0244 (LC) provides guidance as to the approach which the First-tier Tribunal should take to assessing the amount of an RRO awarded under section 44 (not being a case where the maximum amount provisions apply).

42. In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):

    (i) The terms of section 46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the Tribunal could order under s.44 [23];

    (ii) S.44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and section 44(4) requires the Tribunal in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However, the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

    (iii) The RRO must always "relate" to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent

> paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in s.44(4) [25].

43. Among recent authorities, the Upper Tribunal in *Acheampong v Roman; Choudhary v Razak* [2022] UKUT 239 (LC) (as confirmed in *Dowd v Martins & Ors* [2022] UKUT 249 (LC)) set out that when considering an award for an RRO, the Tribunal must take the following steps:

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, e.g., gas, electricity and internet access.

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 light of the other factors set out in section 44(4).

Relevant factors and the appropriate award

44. The Applicant originally claimed £3,000, being the equivalent of rent paid over his occupancy. He subsequently revised the claim to £3150 having erroneously identified his rent from December 2020 to June 2021 as £400 instead of £430. It emerged at the Hearing that the figure is still incorrect. The Applicant had produced bank statements for the 6 month period between December 2020 to June 2021. These revealed payments to the Respondent of amounts varying between £300, £390, £410 and £430 per month.

45. For October and November 2020, when the Applicant resided in a loft room without facilities, the rent was £300 per month. In December 2020, he moved to another room with ensuite facilities. The Applicant explained to the Tribunal that he decorated this room and the Respondent gave a "reduction" from £430 to £300 for rent payable in January 2021. A £20 rent reduction was applied in February 2021 for the cost of a replacement blind. Then £40 was deducted for the

Applicant's fee to repair a shower in another room in May 2021. The reasons for these reduced rental payments were not contested.

46. The Tribunal finds that they were not in fact rent reductions, but payments to the Applicant which were set off against the rent. The tenancy agreement was not signed by the parties until 1 July 2021 (i.e., 2 days before the tenancy was terminated). However, it records that the monthly rent payable in advance was £300 for October and November 2020 and £430 from December 2020 onwards. Thus, the rent payable over the relevant period totalled £3,610.

47. No universal credit was paid to the Applicant which needs to be deducted pursuant to section 44(3)(b).

48. Accordingly, the maximum RRO which could be ordered in favour of the Applicant is £3,610.

49. There was no gas supply at the property. It was agreed that electricity was included within the rent but the Respondent's Solicitor had no information on the value for it to be taken into account.

50. The Tribunal has reached the following conclusions on the other specific matters it is to take into account under section 44(4), and as to any other matters it considers relevant.

51. Screenshots of phone messages between the parties' form part of the Respondent's bundle. These record issues that the Applicant was having with other tenants within the property. From mid-June 2021, it is plain that the Applicant was sending regular messages to the Respondent which became abusive at times as the Applicant pressed for a financial settlement. It is noted that this was in the context of the Applicant being seemingly intent on leaving the property. They do not appear to reveal any poor conduct on the Respondent's part. The culmination of the Applicant accepting payment of £1,300 to leave the property in return for not bringing RRO proceedings is relevant conduct.

52. An email from the Council's Private Housing Licensing Enforcement Officer confirms that the Council inspected the property on 17 June 2021 and identified "*a number of Management Regulation breaches and severe safety concerns for example no fire safety in place*". In an email to the Applicant on 29 June 2021, the Council's Principal Environmental Health Officer confirmed two issues (i) the property was an unlicensed HMO, and (ii) as an HMO, the property needed to meet minimum requirements in the Management Regulations. The area of concern was the lack of fire detection. The landlord had been requested to install battery operated smoke alarms as a temporary measure until a hard wired system could be installed.

53. The email confirms that the Council was satisfied the property was not posing an imminent risk to health and safety of the occupants which is why no prohibition order is being served.

54. The Tribunal takes account that the Respondent failed to ensure basic fire safety provisions were in place and the seriousness of this matter.

55. Apparently, the Respondent is now unemployed but not claiming benefits. His wife works and the Respondent receives financial support from her. It was confirmed the Respondent was a professional landlord at the time of the offence. Whilst the Respondent's Solicitor believes he has other properties, she did not know how many and if any were HMO's. The Solicitor was also unable to say if the Respondent continues to receive income from any properties. As details are vague as to the Respondent's financial circumstances, the Tribunal does not find sufficient reason to reduce the amount of the RRO on this basis.

56. The Respondent has been convicted of a licensing offence. His Solicitor confirmed that he had no previous convictions for unlicensed HMO's or financial penalties (under section 249A of the 2004 Act). The Respondent apologies "*profusely for my inability to realise I needed to apply for and obtain an HMO licence*."

57. As a first offender, it is a factor in his favour but it would be surprising for a professional landlord not to be aware of licensing requirements. The explanation for being unlicensed is also unsatisfactory. It was stated that the property was originally let out as a 2 bedroom house from April 2016 to January 2020. After the tenants vacated, the Respondent contemplated selling the property, but due to the coronavirus pandemic it was not the right time to sell. Further tenants had moved in in June 2020 and the rooms continued to be let without the Respondent realising it was a HMO.

58. The Respondent has already been heavily fined. However, the very clear purpose of the 2016 Act is that the imposition of a RRO is penal to discourage landlords from breaking the law. It is not to compensate a tenant, who may or may not have other rights to compensation. The Tribunal also bears in mind the importance of the aim of this jurisdiction of enforcing a licensing regime which is intended to raise the standards of privately rented HMOs.

59. Having evaluated the matters above, the Tribunal concludes, that in the circumstances of this case, it is appropriate to make a reduction form the maximum amount to reflect the conduct of the Applicant in accepting the sum of £1,300 from the Respondent under the Settlement Agreement. Whilst noting that the amount was expressed to be for support towards the Applicant's new rent, deposit and loss of earnings, the Tribunal takes into account that the payment was also on the basis that a RRO application would not be made.

Conclusion

60. The Tribunal therefore awards the Applicant the sum of **£2,310.00**.

Name: **Judge K. Saward** **Date:** 23 November 2022

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

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority….

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

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).

254 Meaning of "house in multiple occupation"

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

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) (“the self-contained flat test”);

(c) it meets the conditions in subsection (4) (“the converted building test”);

(d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

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

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

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

(a) it is a converted building;

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

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

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

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

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

(8) In this section–

"basic amenities" means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

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

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

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

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]1;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who [...] fall within subsection (3)(a);

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in

occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

Housing and Planning Act 2016, Chapter 4

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

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.

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 the 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.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is "no prospect of appeal" , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act 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.