FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2021/0195**
Property	**:**	**Flat 301 Lighterman Point, 3 New Village Avenue, London E14 0ND**
Applicant	**:**	**Ruan Xinyue**
Representative	**:**	**Mckie Legal**
Respondent	**:**	**Mengchen Liu**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Nicol** **Mr S Wheeler**
Date and Venue of Hearing	**:**	**15th March 2022;** **By remote video conference**
Date of Decision	**:**	**15th March 2022**

DECISION

The Respondent shall pay the Applicant a Rent Repayment Order in the sum of £2,533.33.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. On 22nd September 2020 the Respondent granted the Applicant a 6-month fixed-term tenancy of a room at the subject property, Flat 301 Lighterman Point, 3 New Village Avenue, London E14 0ND, a 3-bedroom flat with shared bathroom/toilet and kitchen facilities. The other two rooms were occupied by other tenants for the duration of the tenancy.

2. The Respondent is the leaseholder of the property.

3. The Applicant seeks a rent repayment order against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. There was a remote video hearing of the application at the Tribunal on 15th March 2022. The attendees were:

- The Applicant;
- Mr Callum McLean, counsel for the Applicant;
- The Respondent; and
- Mr Chike Ezike, solicitor for the Respondent.

5. The documents available to the Tribunal consisted of the following in electronic form:

- A bundle of 63 pages compiled by the Applicant's solicitors;
- A bundle of 52 pages compiled by and on behalf of the Respondent – there was a paragraph missing from the copy of the Respondent's witness statement in the bundle so Mr Ezike emailed a full copy;
- A supplementary bundle of 27 pages also compiled by and on behalf of the Respondent;
- An Applicant's Reply to Respondent's Bundle of 9 pages; and
- A skeleton argument and authorities from Mr McLean.

The offence

6. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant alleged that the Respondent was guilty of having control of and managing a House in Multiple Occupation (HMO) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act"). The Tribunal must be satisfied so that it is sure, the criminal standard of proof, that the offence has been committed.

Reasonable excuse

7. The Respondent conceded that the local authority, the London Borough of Tower Hamlets, has an additional licensing scheme, introduced in April 2019, which applies to the subject property and that she should have licensed the property but did not. However, she asserted that she was unaware of this and the circumstances of her ignorance give rise to a reasonable excuse, which is a defence under section 72(5) to be established by the Respondent on the balance of probabilities.

8. The Respondent told the Tribunal that she began letting the property in 2018. The property was laid out as a two-bedroom flat with one reception room and she originally let it on that basis. However, she was aware from the start that she might want to use the reception room as a bedroom so that she could let it out and increase her income.

Therefore, she did some preliminary research on any requirements that might apply.

9. She looked at the gov.uk website as it related to HMOs. It stated that an HMO was a property with at least 3 tenants but also that an HMO only required a licence if occupied by 5 or more people. The website went on to say that local councils can include other HMOs for licensing and provided a link to find out if an HMO were needed from the local council.

10. The Respondent could not recall whether she followed that link or looked at Tower Hamlets's website but, on a date in 2018 or 2019, she phoned Tower Hamlets and spoke to an officer. She cannot recall whether she asked for the officer's name, let alone what it was. In any event, the officer allegedly told her that she did not need an HMO licence if there were fewer than 5 occupants, apparently confirming what the gov.uk website had stated.

11. It is inherently unlikely that a Tower Hamlets officer would have been so ignorant of his council's additional licensing scheme as to give out such erroneous information. In contrast, the Respondent's evidence about her phone call is weak and unsupported by phone, council or other records. It is possible that the conversation took place so early in 2018 that the officer was not even aware that an additional licensing scheme was pending. Otherwise, the Tribunal is not satisfied that it happened in the way the Respondent described.

12. If the conversation did take place in 2018, it was another 1½-2 years before the Respondent brought in a third tenant, the Applicant, to the property. The fact that she had previously researched the point demonstrated that she understood the significance of having 3 occupants rather than 2. However, she freely admits that she did not check whether the situation had changed and that she just assumed it had not. An excuse is not reasonable if it is founded on actions which themselves are not reasonable. The Respondent could and should have checked whether, in September 2020, she now needed a licence.

13. In the circumstances, the Tribunal is satisfied that the Respondent did not have a reasonable excuse for having control of or managing an HMO which is required to be licensed but is not.

Period of offence

14. On 11th December 2020 the Applicant travelled to China and did not return until June 2021. When the tenancy expired in March 2021, she had a friend retrieve her belongings where she had left them in storage in the property to put them in alternative storage until her return. Under section 254(2)(c) of the 2004 Act, part of the definition of an HMO is that the living accommodation is occupied by the relevant persons as their only or main residence. The question arises whether the property continued to be the Applicant's main residence while she was away. During that time, there were only two occupants so that the

property was not an HMO unless, despite her absence, it remained her main residence.

15. The reference to "only or main residence" means that the Applicant can have more than one residence. Whether the property remained her main residence depends on her intentions. In her evidence to the Tribunal, the Applicant said that she always intended to return and regarded the subject property as her main residence (her residence in China was with her parents). The Tribunal must look at what objective evidence exists to support her claim.

16. The parties spoke frequently using a messaging app, WeChat. On 7th December 2020, the Applicant told the Respondent,

> I plan to give up the lease, because I estimate next semester is also online classes, so this time I will not come back. Starting a business here also involves a lot of domestic customers cooperation, as the main person in charge I have to operate some contracts and bank business, and then ready to develop in China.

17. There was then some back and forth as to whether the Applicant would return before the end of the tenancy but, on 8th December 2020, she stated, "I'm going to sublet it to someone else, …" The Respondent consented on condition that the rental period was at least 6 months. She also suggested that, if the Applicant had not sublet, she would start looking for a new tenant in February, to which the Applicant replied, "Yeah, yeah. Okay."

18. On 18th December 2020 the building concierge told the Respondent that someone had returned keys on the basis that they were cancelling an AirBnB letting due to the lack of cleanliness in the property. The Respondent further stated that, on 21st December 2020, the management company for the building told her that short-term AirBnB lets constituted a breach of her lease. The Respondent found out that the Applicant had been advertising her room for a one-month let on AirBnB. She asked the Applicant to take the ad down. The Applicant agreed and apologised. Although it is not clear how, the ad actually remained in place and the management company complained to the Respondent again about it in March 2021.

19. In the Tribunal's opinion, the evidence shows that the Applicant had no clear intention to return and was actively trying to arrange a sub-letting which would have excluded her from the property. While the property could arguably have remained a residence, the Tribunal is satisfied that it did not remain the Applicant's main residence after she left on 11th December 2020. From that point, the property was not an HMO and so the Respondent could not have been continuing to commit the offence under section 72(1) thereafter.

Rent Repayment Order

20. The Tribunal is satisfied so that it is sure that the required elements of the offence of having control of an HMO which is required to be licensed but is not so licensed have been made out for the period from 22nd September to 11th December 2020 and that the Respondent has no reasonable excuse for this.

21. Therefore, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make a Rent Repayment Order on this application. The Tribunal has a discretion not to exercise that power. However, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.

22. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation.

23. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 9. In *Parker v Waller* … the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.
>
> 10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be "such amount as the tribunal considers reasonable in the circumstances". … With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):
>
> > "There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable."
>
> 11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. … Paragraph 26(iii) of *Parker v Waller* is not relevant to the provisions of the 2016 Act …
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> 12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.
>
> 13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums

that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

> I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. … the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The

> landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. …

24. On the basis of the decision in *Vadamalayan*, when the Tribunal has the power to make a RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the 2016 Act, from which deductions are permitted under section 44(3) and (4) – the Tribunal must take into account the conduct of the parties, the landlord's financial circumstances and whether the landlord has been convicted of a relevant offence.

25. In *Williams v Parmar* [2021] UKUT 0244 (LC) the Upper Tribunal held that there was no presumption in favour of awarding the maximum amount of an RRO. The tribunal could, in an appropriate case, order a lower than maximum amount of rent repayment, if the landlord's offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. In determining how much lower the RRO should be, the tribunal should take into account the purposes intended to be served by the jurisdiction to make an RRO, namely to punish offending landlords; deter landlords from further offences; dissuade other landlords from breaching the law; and removing from landlords the financial benefit of offending.

26. In *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke expressed concerns (at paragraph 40) that using the total rent as the starting point means it cannot go up, however badly a landlord behaves, thereby limiting the effect of section 44(3). However, with all due respect, this stretches too far the analogy between RROs on the one hand and criminal penalties or fines on the other.

27. Levels of fines in each case are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. However, an RRO is penal but not a fine. The maximum RRO is set by the rent the tenant happened to pay, not by the gravity of the offence. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

28. There is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO, as happened in *Awad v Hooley* when the tenant withheld their rent, and that is how section 44(3) may find expression.

29. In this case, the Respondent was committing the relevant offence for 80 days. The rent for the full period of the tenancy, 180 days, was £5,700. The Respondent claimed that she had returned £100 of the rent but this was compensation for having to live with a problematic heating and hot water system for a period of time. The maximum amount of the RRO in this case is £2,533.33, being the apportioned part of the total rent for the relevant 80-day period.

Deductions

30. The Respondent has no previous convictions for this type of offence and did not put forward any submissions on or evidence in relation to her financial circumstances. However, both parties sought to impugn each other's conduct.

31. The conduct of a landlord and tenant can encompass any actions or omissions during a tenancy. However, it is rare that nothing at all goes wrong and no relationship is ever perfect. There is no point in a Tribunal considering every minor imperfection or bump in the road that occurs. The conduct in question should be sufficiently serious or significant as to compel the Tribunal to award an amount which is different from what they would otherwise have awarded.

32. In this case, the Applicant complained about the Respondent's conduct in addressing a problem with the building's communal heating and hot water system, retaining a holding deposit in lieu of part of the security deposit and a supposed lack of communication or inspection of the property. The Respondent pointed to the Applicant's attempted use of AirBnB.

33. With all due respect to the parties, the Tribunal struggled to find anything significant in these complaints. The communal heating and hot water system was not in the Respondent's control and she provided two heaters, while the offer of a third was turned down. The Applicant did not lose out financially from the retention of the holding deposit, albeit that this was an unusual way of doing things. The evidence did not support the claims of a lack of communication or inspection. As to the AirBnB matter, the Applicant shouldn't have sought to sub-let in that manner but she backed off as soon as she was asked and no actual sub-letting took place.

Utility costs

34. The rent included all the utilities and Council Tax. The Respondent sought deductions from the amount of any RRO to take account of her expenditure on such matters.

35. Rent is defined in section 52 of the 2016 Act as including any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit. That section provides that the calculation of an award of universal credit is to include an amount in respect of any liability of a

claimant to make payments in respect of the accommodation they occupy as their home. There is provision for regulations to be made as to what is meant by payments in respect of accommodation and the circumstances in which a claimant is to be treated as liable, but there are no regulations excluding the costs of services or utilities for tenants in the private sector.

36. The actual rent is specified in the tenancy. As an expert tribunal, the Tribunal can state that the rent is the price the landlord is prepared to offer, and the tenant is prepared to accept, not just for the property itself but for whatever services or inclusive bills it comes with. Landlords and letting companies offer services and inclusive bills not out of some altruistic motives but to ensure that the property is attractive in the market, so that they can find tenants prepared to pay the amount asked in rent. Therefore, there is no basis, either in law or in practice, for disregarding part of the rent to reflect the costs of such services or inclusive bills.

37. In paragraph 16 of her judgment in *Vadamalayan*, Judge Cooke said,

> In cases where the landlord pays for utilities, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities.

This statement rests on the premise that the landlord gets nothing out of the deal and that the inclusion of such costs is not reflected to any extent in the rent, for neither of which is there any evidence.

38. Furthermore, this is a policy argument, putting forward a rational basis for why the statute should provide for the exclusion of such costs. However, such arguments are for the legislature, not this Tribunal. There is nothing in the statute which provides for such deductions.

39. The Upper Tribunal is a superior court of record and, therefore, its decisions are binding on this Tribunal. However, utility costs were not part of the deductions sought or granted in *Vadamalayan*. Judge Cooke's comments on utility costs in paragraph 16 of her judgment were not part of the rationale for the decision and were therefore obiter. Therefore, they are not binding.

Conclusion

40. In the circumstances, the Tribunal is satisfied that a RRO should be made in favour of the Applicant for the maximum sum of £2,533.33.

Name: Judge Nicol **Date:** 15th March 2022

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

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

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(1) 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.

(2) 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.

(3) 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).

Section 254 Meaning of "house in multiple occupation"

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

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

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

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

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

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

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

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

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

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

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

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

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

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

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

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

(a) it is a converted building;

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

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

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

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

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

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

(6) The appropriate national authority may by regulations–

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

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

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

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

(8) In this section–

"basic amenities" means–

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

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

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

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

(a) which forms part of a building;

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

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

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

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

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.