FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMF/2021/0143**
HMCTS code	**:**	**Video**
Property	**:**	**135 Hainault Road, London E11 1DT**
Applicant	**:**	**Mr J Mullan**
Representative	**:**	**Mr Penny, of Flat Justice**
Respondent	**:**	**Mr M Moazzam**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms F Macleod MCIEH**
Date and venue of Hearing	**:**	**17 December 2021 and 31 January 2022** **Remote**
Date of Decision	**:**	**20 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video using VHS (the morning of 17 December 2021) and CVP (the afternoon of 17 December 2021 and 31 January 2022). A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

Orders

(1) The Tribunal makes a rent repayment order against the Respondent to the Applicant in the sum of £ 5,025, to be paid within 28 days.

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application

1. On 31 May 2021, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 22 June 2021.

2. The period for which the RRO is claimed is from 15 June 2019 to 15 June 2020, in the amount of £5,900.

3. The Tribunal was provided with an Applicant's bundle of 67 pages and a "reply bundle" of 56 pages, and a Respondent's bundle of 63 pages.

The hearing

Introductory

4. The Applicant was represented by Mr Penny, of Flat Justice. The Respondent represented himself.

5. The hearing was listed for one day, on 17 December 2021. On that day, however, we experienced a number of problems with the platform being used (VHS). In the event, we were only able to deal with the preliminary issue on VHS. We were able to change to CVP for the afternoon, and heard the oral evidence of the Applicant. We reconvened on 31 January 2022 to complete the hearing on CVP.

Preliminary issue

6. The Respondent objected to our receiving the reply bundle provided by the Applicant. Mr Moazzam drew our attention to a letter dated 24 November 2021 from the Tribunal office reporting that Judge Bowers had granted a short extension for the service of the reply provided for in the directions, on the basis that Flat Justice had only recently been instructed. The letter expressly allowed the application on the basis that what would be served would only be a reply and was "not an opportunity to submit any new evidence". The reply bundle contained witness statement from two other tenants at the property (Ms A Szulczewska and Mr J Carr), and a number of documents, including phototgraphs.

7. Mr Penny argued that the new material in the reply bundle did not materially add to the Applicant's case, but merely provided additional support for the case as originally stated. The new material was an expansion of original material. The letter reporting Judge Bowers' decision, Mr Penny submitted, did not override the provision in the direction itself (direction 11) that the reply could include "supporting documentation".

8. Mr Moazzam argued that the material was new evidence, that it was too late for him to fully assimilate and understand it (particularly print-outs of new Whatsapp messages), and some photographs in the bundle were not supported by material indicating who took them and when.

9. We adjourned to consider the application. We ruled that material that was clearly new evidence would be excluded, on the basis that it ignored the condition put on the extension of time by Judge Bowers. We reject Mr Penny's suggestion that the fact that the direction allowed "supporting documentation" meant that new evidence could be included, despite Judge Bowers clear statement that there should be no new evidence. We doubt there was in fact a conflict between the directions and Judge Bowers' condition, as the reference in the standard direction to documentation should be read as limited to the purposes and nature of a brief reply. But even if they were, the directions have no more formal authority than a determination by a procedural judge after directions are made.

10. We therefore declined to accept the witness statements (with the consequence that we were not prepared to hear from the new witnesses), a completely new sequence of WhatsApp exchanges (from pages 23 to 45 of the reply bundle), and an additional email (page 21). The other material – the narrative reply, the photographs, and a small number of other additional documents – would be admitted. Those documents were properly to be seen as being "supporting documentation" to the narrative reply, rather than new evidence, and material that Mr Moazzam could properly be expected to deal with.

The alleged criminal offence

11. It was agreed that the property is a three storey house, containing six bedrooms, in the London Borough of Waltham Forest. There was evidence from an officer of the Borough that the property did not hold a licence under the mandatory scheme at the relevant time, which was not contested.

12. There was a tenancy agreement letting the property as a whole to (only) the Applicant and Ms Szulczewska from 29 May 2019.

13. In short summary, the parties' cases were as follows.

14. The Applicant's case was that for all of the relevant time, the property was occupied by six occupants comprising separate households who shared cooking and bathroom facilities and lavatories, and paid rent. Mr Mullen acted as "lead tenant" on behalf of the Respondent, who was aware of the occupation and who received rent from each of the occupants. Limiting the tenancy to Mr Mullan and Ms Szulczewska was merely a means for the Respondent to better manage the occupation of the property.

15. The Respondent's case was that his tenants were the Applicant and Ms Szulczewska, and it was only from them that he received rent. If there were other occupants, they were unlawful sub-tenants, of whom he was (largely) unaware.

16. We turn to the evidence in more detail.

17. Mr Mullan's evidence was that he had lived in a room at the property from 2017 until 30 April 2021. He paid a monthly rent of £491.67 (a sixth share of £2,950). There were always six occupants.

18. Up until about May 2019, all (or nearly all) of the occupants signed an assured shorthold agreement with the Respondent, although this arrangement proved difficult, and sometimes fewer names appeared, depending on who was available when a new agreement was signed. Then, in May 2019, the Respondent asked that Mr Mullan and Ms Szulczewska only sign the assured shorthold agreement, and collect the rent from the other four occupants, in order to simplify the management of the coming and going of occupants. This was purely a means of managing tenant churn, not a change in substantive occupancy, and the Respondent was aware of all occupants throughout. As a result of the Respondent's request, the two lead tenants signed a tenancy agreement starting on 30 June 2019.

19. Mr Mullan provided a table setting out who he said was in occupation during the relevant time. This showed continuous occupation of all rooms (although sometimes an occupant would change rooms) during

the period from June 2019 to 2020. Six people were in occupation at any one time, and a total of eight people occupied at one time or another. Mr Mullan's evidence was that there was at least close to continuous occupation of all rooms – if there were voids at any time, they were only for a few days.

20. Mr Mullan supported his account with evidence from discussions in a WhatsApp group consisting of himself, Ms Szulczewska and the Respondent, and evidence of payment.

21. The Applicant's original bundle provided only extracts from the WhatsApp group. The reply – in material that we let in – set out the un-extracted version.

22. The extracts date from August 2019 to July 2021. They show Mr Mullan addressing the Respondent on the basis that there are six occupants and that each pays one sixth of the rent to the Respondent, via Mr Mullan. Five of the six people other than Mr Mullan himself and Ms Szulczewska who (Mr Mullan said) were in occupation are named in the exchanges.

23. We reproduce some examples:

> 29 August 2019: "Joel: Moazzam. I've just paid 4/6 rent into your account (£1968). Elana told us on Monday that she was moving out on Tuesday and has not found anyone to replace her. We will put up a paid ad on Spare Room and find someone to replace her ASAP"
>
> 1 April 2020: "Joel: Hi Moaz - have just sent onto you the 3 sets of rent I have received minus the 69.99 spent on the new vacuum cleaner - 1406. This covers myself, Bistra and Naj. Alex is expecting to be paid in the next few days. I expect to receive Tim's around the middle of the month as usual"
>
> Same date, "Joel: I have asked Daniel to contact you directly to discuss his situation"
>
> 3 July 2020: "Joel: Hi Moaz. Daniel and Naj have now gone. As agreed we have used 2 of this months rent payments to repay them their deposits. I have paid you one set of rent minus £150 to cover the bills shortfall on the empty, again as agreed. Tim's rent is as usual late and will be passed on as soon as I get it"

24. The extracts show Mr Mullan exercising some management responsibility for the property, in addition to collecting and passing on the rent, but in doing so, they also show that Mr Moazzam had full knowledge of both occupation and how he was receiving the rent.

25. Later, the exchanges show some tension in the relationship as the effects of the Covid-19 lockdown put pressure on the ability of some of the occupants to pay their rent. On 1 April 2020, Mr Mullan writes the following message:

> "Joel: I suggest you may want to consider putting a new contract in place with all 6 names on it rather than just me and Alex. To be clear, if there is any shortfall in rent due to the coronavirus situation, Alex and I cannot make up any difference beyond our own shares of the rent (1/6 each)."

26. In a similar vein, on 3 July 2020,

> "Joel: For me this whole episode with Naj [apparently relating to rent arrears] has highlighted the need to regularise the tenancy agreement. As mentioned previously we want all tenants names to be of the agreement going forward.

27. The fuller contextual print out from the WhatsApp group in the Applicant's reply do not show any objection by Mr Moazzam which might indicate that he did not know about the other occupants or the responsibilities for payment of rent and replacement of occupants. There are other entries which show that Mr Moazzam ("Moz") did use the group. Further, some exchanges show Mr Moazzam apparently holding the Applicant and Ms Szulczewska responsible for managing rent collection, but also being aware that others are the people actually paying the rent. For example:

> "13/09/2019, 10:54 - Moz: Hi, I have noticed that your still £492 short on this month's rent. You said You'll make the payment by the 12/9/19, it's past that date. It's your responsibility to keep the payment on time. Please make payment today. Thank you.
> 13/09/2019, 11:51 – Alex S: Hi Moaz. I spoke to Tim and he said he doesn't have the money and wont pay
> 14/09/2019, 10:50 – Alex S: Hi Moaz Tim said he paid the rent to Joel so you should receive the money shortly
> 14/09/2019, 13.23 – Joel: I have received this and transferred it on to you Moaz
> 15/09/2019, 16:19 – Moz: Thanks, got it"

28. Amongst the references in the WhatsApp conversations which referred by name to the other tenants were references to Mr Mullan and Ms Szulczewska advertising for and finding new tenants when there were vacancies. These messages did not elicit any objection from Mr Moazzam.

29. Mr Mullan also said in evidence that he could not have afforded to pay half of the entire rent of about £1,500. At the time, he was earning about £45,000 a year, so such a rent would constitute over half of his

income after tax. There was other evidence to the effect that Ms Szulczewska was earning approximately £29,000 at the time.

30. We asked Mr Mullan about his experience of other lettings, and the concept of a lead tenant. He said he had rented in London for 11 years, in sharing contexts. 135 Hainault Road was the largest. Most of his previous sharing experience had been with two others. It was common, he said, for one tenant to be informally identified as a lead tenant to simplify the relationship with the landlord, and in relation to other practical matters, like contributions to other joint bills. Sometimes, as with his current tenancy, a lead tenant was identified in the assured shorthold tenancy. For the most part, the relationship was informally understood. The role would often fall to the longest standing tenant.

31. To the extent that Mr Moazzam's cross examination of Mr Mullan was relevant to the allegation of the criminal offence, Mr Moazzam put it to Mr Mullan that he and Ms Szulczewska were the only tenants and that no others had the right to live there. Mr Mullan denied it and reiterated his evidence.

32. During the course of the cross examination, Mr Mullan denied a suggestion put to him that Mr Moazzam had challenged Mr Mullan as to how Mr Webb came to occupy the property. Mr Mullan said that Mr Carr had found Mr Webb as a replacement when he, Mr Carr, moved out, and that subsequently, Mr Webb had trouble paying the rent as a result of losing his job. Mr Mullan said he referred this issue to Mr Moazzam to deal with. Mr Mullan said that the process by which Mr Webb came into occupation (ie as a replacement for Mr Carr), and had a key, was obvious and normal, but Mr Mullan had no direct involvement in it.

33. Asked if he had had a conversation with Mr Webb about leaving, Mr Mullan said that he had had a conversation with Mr Moazzam in the Autumn of 2019 about what Mr Moazzam wanted to do about Mr Webb. Mr Webb was paying his rent late, and was not contributing properly to the bills that the tenants collectively paid. Following that, Mr Mullan had an informal conversation with Mr Webb, suggesting that if he was not able to pay the bills and rent, he would have to find somewhere else to live. He was not aware of the correspondence Mr Moazzam had disclosed in these proceedings. He, Mr Mullan, was clear, he said, that he would forward rents that he received from other tenants, but would not advance rent before it was received by him.

34. We ordered that Mr Moazzam's statement of reasons for opposing the application should stand as his evidence in chief.

35. The Respondent's evidence was that he let the house to the Applicant and Ms Szulczewska, and no-one else. In his statement, he said he became aware that Tim Webb was living there. His account was that he

challenged him that he was not a legal tenant. To support this, he exhibited a letter dated 27 July 2020, in which he claimed that Mr Webb moved in without his consent, but also asked him to pay a share of the rent. The letter then purports to give notice to vacate the premises. The statement continues that he asked Mr Mullan and Ms Szulczewska to telephone the police (they did not), and referred to an exchange of letters with Waltham Forest housing department relating to Mr Webb. He exhibited a letter from the authority dated 24 October 2019, which referred to Mr Moazzam orally asking Mr Webb to leave; and a reply dated 29 October 2019, in which Mr Moazzam stated that Mr Webb was resident without his consent.

36. On 5 June 2020, Mr Moazzam said, he became aware of Najla Woods (one of the occupiers on Mr Mullan's schedule), because she contacted him about Mr Mullan and Ms Szulczewska refusing to reimburse her deposit. He said she threatened to report him for not having an HMO licence. He told her she was not his tenant.

37. In his statement, he said of the WhatsApp exchanges that "I couldn't find the conversations in my group", which we interpret to mean that he could not find them in his own WhatsApp app, and goes on "but I have never permitted subletting of the property".

38. Mr Moazzam was extensively cross examined on the WhatsApp messages. Some he said he would interpret in a way compatible with there being two tenants (for instance, where Mr Mullan referred to paying "4/6" of the rent, he would have interpreted that as simply being a reference to 2/3 of that owed by the two of them having been paid). In respect of others, he simply said he did not know about them or could not remember reading them, or that he did not know why Mr Mullen was saying what he did. On a number of occasions, he said that if he had read a message, he *would have* telephoned Mr Mullan or Ms Szulczewska, but when challenged could not say for certain that he did make such telephone calls. At one point he suggested that there was another WhatsApp group, but was unable to give any further details of it.

39. There were elements of the WhatsApp conversations that Mr Moazzam acknowledged. For instance, one of the excerpts from the WhatsApp conversation related to discussions about the replacement of a carpet. Mr Penny drew his attention to a passage in the Whatsapp conversation in which Ms Szulczewska answered a question from him about him attending the property in relation to the carpet, and in the same message referred to her and Mr Mullan as having found "a new tenant". Mr Moazzam said he was aware of the issue relating to the carpet, and was able to readily recall details of problems encountered with fitting the carpet, but again said that although he would have objected to the finding of a new tenant, he had no specific memory of having done so.

40. In cross examination, Mr Moazzam also denied it was improbable that two people would rent a six bedroom house and that the rent would have been too much for two people.

41. As to the law, it is clear that if the Applicant's account is accurate, the house should have been licenced under the mandatory scheme. We do not understand the Respondent to question this. The Respondent asserted that he had a licence under the selective scheme operating in the local authority area at the time, but the Respondent did not claim that he thought he was only required to have a selective licence, and that such a belief was sufficient to constitute a reasonable excuse under section 72(5) of the 2004 Act, in respect of the mandatory scheme.

42. His case, rather, was that a mandatory licence was not necessary because he was letting to two people only (in, presumably, reliance on schedule 14, paragraph 7 to the 2004 Act). If anyone else was living there, he was (largely) unaware of their presence. Given that the offence under section 72(1) is one of strict liability (*Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083 (Admin), [2020] 1 WLR 2929), it may be that such ignorance would not excuse him from liability if he were, as a matter of fact, receiving rent from the unlawful sub-lessees. However, if we were to find as a fact that he was not (substantively) aware of unlawful sub-lessees, that would inevitably amount to a reasonable excuse.

43. Thus it is clear that the question for the Tribunal is one of a conflict of factual evidence. If we believe the Appellant, the offence is made out, and contrariwise, if the Respondent is telling the truth, there is no offence.

44. In setting out our conclusions, we first give our impression of the witnesses. We found Mr Mullan a clear and careful witness who answered questions put in cross examination and by the Tribunal directly, and with care. Mr Moazzam was sometimes clear and straightforward in this evidence – for instance, in relation to the replacement of the carpet, and some other incidental matters. However, when it came to the core of the issue facing the Tribunal, and in particular to Mr Penny's cross-examination on the WhatsApp conversations, he was evasive and frequently unclear. We take into account that Mr Moazzam was suffering from painful back problems (which we had accommodated with additional breaks).

45. Mr Mullan spoke with a stutter. Mr Moazzam said in his submissions that, at an earlier stage in their relationship, he had not realised that Mr Mullan stuttered. Insofar as this may have been a suggestion that Mr Mullan's stutter may have been indicative of dishonesty, we reject it. It is common knowledge that people are more inclined to stutter when nervous, and that giving evidence before a Tribunal can give rise to some apprehension.

46. Our impressions of the witnesses is something we take into account in considering their relative credibility, but we do not place a great deal of weight on it. Rather, we rely principally on the inherent probabilities in the light of the contemporaneous documents.

47. In very broad terms, it is at least comparatively unlikely, from all experience of the short-term rental market in London, that two single people in the positions of Mr Mullan and Ms Szulczewska would rent alone a large, six bedroom house, and do so having previously been but two of (up to) six tenants of the same house. It is true, of course, as Mr Moazzam said in his submissions, that people do rent large houses. But, in this context, it is implausible. We would not suggest that this consideration alone would lead us to conclude that Mr Moazzam's account was untrue (certainly not to the criminal standard), but it provides a starting point.

48. Much more importantly, we have a clear contemporaneous record of the communication between the parties in the form of the WhatsApp conversations. These show, beyond any doubt, that Mr Mullan's account is accurate and Mr Moazzam's is dishonest. They clearly show an ongoing relationship in which Mr Mullan and Ms Szulczewska are openly collecting and passing on the rent to Mr Moazzam, and openly assisting with, or reporting, the process whereby an outgoing occupant is responsible for finding a replacement.

49. Mr Moazzam's answers to this is wholly unpersuasive. He takes part in the WhatsApp conversations, but at no time is there anything he says that throws any doubt on his understanding and acceptance of these practices. Rather, when his responses address matters like the receipt of rent (albeit this occurs only occasionally), they clearly endorse what is happening. His denials that he understood what was happening, or that, he "would have" contacted Mr Mullan or Ms Szulczewska in some other way (but about which he has no recollection) are wholly unconvincing. If it were true that he had done so on even one occasion, it would obviously have had an effect on the conduct of Mr Mullan and Ms Szulczewska subsequently. They would not have gone on openly talking about collecting rent and replacing tenants.

50. We conclude that it is Mr Mullan's evidence that is truthful. Mr Moazzam had control of an HMO without a licence, and he has no reasonable excuse for the failure to licence. We reach this conclusion as one that is beyond a reasonable doubt.

51. We conclude that we will order an RRO.

The amount of the RRO

52. We are required to take into account the conduct of the parties and the financial circumstances of the landlord (Section 44(4) of the 2016 Act).

Mr Moazzam advanced no case in respect of his financial circumstances.

53. We consider that the position in respect of the conduct of the parties can be dealt with fairly briefly. Neither party relied heavily on conduct issues in their final submissions.

54. The Applicant provided some evidence of disrepair, and of inadequate fire precautions. Photographs provided by the Applicant, which he said were taken at the time of his departure, showed some disrepair. One showed brown marks on a wall, which appeared to us to be typical of evidence of previous damp. Another showed some evidence of mould above a shower. Two more showed wallpaper peeling off, which again appeared indicative of historic damp.

55. Mr Moazzam's answer to these were that they were not reported to him.

56. Another photographs showed an empty fire blanket box in the kitchen.

57. The Applicant accepted that gas safety and energy performance certificates were supplied by email, but he did not recall an electrical installation condition report. There were no details of the landlord displayed inside the property.

58. We were not able to discern a relevant allegation of poor conduct by the Applicant from the Respondent's evidence or submissions.

59. While we accept that, in particular, the photographs of the peeling wallpaper indicate disrepair of some significance, it is not clear that it was reported (albeit relations had deteriorated by that time). In any event, they represent two isolated areas, and are far from the sort of deep seated and general disrepair that can be found in many cases before the Tribunal, or indeed the reported cases in higher tribunals.

60. Insofar as the other matters were concerned, the Respondent claimed that all certificates were provided in each year. There were no factual issues in terms of contacting the landlord, even if the proper information was not displayed. We do not think these are matters of great import.

61. More serious is the lack of fire doors. After the relevant period, an inspection by an environmental health officer took place. In an email exhibited by the Respondent dated 25 June 2020, the officer indicated that the only significant alteration necessary to secure an HMO licence was the installation of fire doors. In fairness, the officer did also say that he was "glad to see that the property had a control panel and the tenants stated that there is fire detection in each of the bedrooms".

62. Nonetheless, it is accepted that fire doors are an important element of fire safety in relation to HMOs, which themselves are more prone to fires than other forms of property. The lack of fire doors is a matter which we take into account.

63. So the lack of fire doors does tell against the Respondent. Otherwise, we do not think the matters urged on us by the Applicant amount to a great deal in terms of adverse conduct by the Respondent.

64. In assessing the quantum of the RROs, we have taken account of the guidance in *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8 and *Aytan v Moore* [2022] UKUT 27 (LC), and the cases referred to therein. We were particularly assisted by the approach of the Upper Tribunal to assessing the proportion of the maximum to award as an RRO in the context of a case in which there was little to take account of in terms of conduct.

65. Given our views of conduct above, and of the guidance in, particularly, *Aytan*, we consider that an RRO of 85% of the maximum possible is appropriate in this case.

Reimbursement of Tribunal fees

66. Mr Penny applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

67. 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 London regional office.

68. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

69. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

70. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 20 April 2022

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

Housing and Planning Act 2016

40 Introduction and key definitions

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

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

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

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

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

	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

	Act	*section*	*general description of offence*
7	This Act	section 21	breach of banning order

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

41 Application for rent repayment order

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

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

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

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

(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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a rent repayment order

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

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

(3) The amount of a rent repayment order under this section is to be determined 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).

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 this 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 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,

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