FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMG/2021/0024**
HMCTS code	**:**	**VIDEO**
Property	**:**	**288 Murchison Road, London E10 6LU**
Applicant	**:**	**Hanane Sahmane**
Representative	**:**	**John-Luke Bolton, of Safer Renting**
Respondent	**:**	**Razia Sultana Chowdhury**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mr A Fonka MCIEH CEnvH M.Sc**
Date and venue of Hearing	**:**	**14 March 2022** **Remote**
Date of Decision	**:**	**20 July 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video using CVP. 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 Orders against the Respondent to the Applicant in the sum of £2,100, 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 Applicant the application and hearing fees in respect of this application in the sum of £300.

The application

1. On 30 July 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 3 December 2021.

2. In accordance with the directions, we were provided with an Applicant's bundle of 137 pages, and a Respondent's bundle of 116 pages, in two parts.

The hearing

Introductory

3. Mr Bolton of Safer Renting represented the Applicant. The Respondent appeared in person.

4. The property is a three bedroomed house, with a kitchen, living room and bathroom. The Applicant, her husband and four children moved in on 10 July 2018. They remain in occupation.

The alleged criminal offence

5. The offence alleged is that of having control or management of an unlicensed house, contrary to Housing Act 2004 ("the 2004 Act"), section 95(1).

6. Waltham Forest introduced a selective licensing scheme for wards including that containing the property on 1 May 2020 to last until 30 May 2025. The scheme applies to all houses which are let or occupied under a tenancy or licence.

7. The Applicant's evidence was that the Respondent obtained a selective licence under the preceding scheme, which lasted from 1 April 2015 until the 31 March 2020. The licence expired on the latter date, having been obtained on 25 April 2017. An application for a licence under the new scheme was subsequently submitted. Whether the defence in section 95(3)(b) of the 2004 Act was made out on 27 May 2021, or on 15 July 2021, was not entirely clear, but the difference is immaterial to the application (see below for the relevant period for the purposes of the maximum RRO). The result is, the Applicant submitted, that the criminal offence was continuing from 1 May 2020 to at least 27 May 2021.

8. The Applicant referred us to the statement on the first page of the licence under the old scheme that the duration of that licence was from 25 April 2017 to 31 March 2020.

9. On 18 February 2021, Ms McGrath, a private sector housing and licencing enforcement officer with the council, wrote to the Respondent noting the new scheme and that the Respondent had yet to apply to for a licence, which was necessary if the property was still let.

10. Mr Bolton also drew our attention to an email to him from Ms McGrath which outlined the measures the authority had undertaken to publicise the new scheme and the requirement for new licenses. In addition to the individual letters to landlords, the authority distributed the information through digital newsletters, landlords' forums and the authority's landlords' website.

11. The Respondent accepted that she did not have a licence at the relevant time, but her explanation of the circumstances amount to a claim that she had a reasonable excuse for not having a license (section 95(4) of the 2004 Act).

12. She said, first, that she had paid for a five year licence in 2017, so she was, or thought she was, covered by that licence (at least until February 2021). Allied to this contention was an assertion that she could have "extended" the licence, but was not told that she could do so. The possibility of "extending" an old licence to cover the new scheme is not clearly set out in the documents before us. However, in an email to Mr Bolton, Ms McGrath did, in somewhat enigmatic terms, suggest that as from June 2019 there had been a scheme to "vary" licences for a longer period than the end of the then scheme, and this scheme had been open until November 2019. This may be the opportunity that the Respondent

had in mind, when referring to "extending" licenses from the old scheme to the new.

13. Secondly, she said that she had started to apply for a licence in February 2021. She exhibited in her bundle screen shots of two emailed reminders to complete the application (dated 17 and 24 February), and an email dated 10 February, stating that she needed to create an account with the relevant email (triggered automatically, it seems, because she had tried to reset a password, but there had been no account associated with the email address she entered). She said at the hearing that she received the automatically generated reminders to complete the application every week thereafter.

14. The Respondent said that she could not complete the application, because she needed to secure some documentation (she referred at one point to the "electricity certificate") that was required. At some point in February, or at least before July, she telephoned the council to ask what to do. She was told over the telephone that it was possible to complete the application without the documents if she clicked a box indicting that the documents would be produced at a later date. She said she telephone the council on two occasions, and received the same advice. However, she said that it did not prove possible for her to complete the process as suggested. The Respondent produced emails to the council making a similar point, but these were in June and July 2021.

15. Finally, she argued that it was incumbent on the local authority to tell her that she needed to renew her licence (or to apply for a new licence), and that they had failed to do so. For the most part, this argument was put on the basis of what the Respondent considered to be equivalent matters, such as advise from DVLA to renew a driving licence, or when a television licence expires. But she also referred us to a passage on a page on the local authority's website headed "Landlords Licensing privacy notice". At the end of a section entitled "Why we need your information and how we use it" appears this text: "We will also contact you before the licence renewal date to ensure your property remains licensed." We noted that the header on the webpage produced referred to covid vaccinations and (in particular) booster vaccinations. We put it to the Respondent that this suggested that the webpage she had reproduced was current at least later in the summer of 2021, when booster vaccinations started. She agreed that the screen shot was from a later date than the relevant period, but said the same statement had been made on previous versions of the same page.

16. The Respondent also said that Ms McGrath visited the Respondent's home during this period to hand deliver letters (something to which the Respondent objected), and did not on those occasions tell the Respondent that she needed a new licence.

17. In answer to a question from the Tribunal, the Respondent said that she did not have any system for staying abreast of the legal responsibilities of landlords.

18. Both in this connection and more generally, the Respondent alleged that Ms McGrath had "teamed up" with the Applicant to secure an RRO and otherwise disadvantage the Respondent.

19. We have considered these matters as potentially raising a reasonable excuse defence. However, we do not find that the defence is made out.

20. It is clear on its face that the Respondent's licence under the old scheme elapsed on 31 March 2020. It should have been evident to the Respondent that that was the case. Overlooking the end date on the face of the licence is not a reasonable excuse.

21. We accept the Respondent's evidence that she started to apply for a licence in February 2021. However, it was obvious to her that she had not completed the application. The reason for that was either that she did not have the documents necessary to compete the application; or that she had not properly completed the on-line form.

22. The former cannot stand as a reasonable excuse. It would amount to it being a reasonable excuse that the Respondent could not satisfy the pre-conditions for the completion of the application. That amounts to a clam that where a local authority required landlords to take substantive steps to secure a licence, it would be a reasonable excuse for a failure to complete an application that those steps had not been taken. This would be an absurd outcome.

23. As to the latter, we did not have independent evidence as to whether it was, in fact, possible to complete the application without submitting the relevant documents. The evidence we did have from the Respondent was that she had been told that this was the case in two telephone conversations. Even if we accept the Respondent's evidence, however, we do not consider that this provides a reasonable excuse. According to her own evidence, it was only in June that she took the issue up again with the local authority, with the result that she subsequently completed an application. Had she done so immediately after the initial failure to complete the form, it might be that she would have a reasonable excuse for the period between the telephone calls and the completion of the form. However, as it stands, she did nothing for some months, despite the weekly reminders that her application was unfinished. On these facts, in our view, it is not possible to make out a reasonable excuse for the period between February and May.

24. Finally, it is incumbent on a landlord to keep herself abreast of the many legal requirements imposed by that status. She admitted that she

took no steps to do so, and had no system in place. Such a system need not be onerous or expensive – she could have joined the local authority's free landlord's forums, or signed up for their newsletters. She could have joined one of the national landlord organisations.

25. Rather than take any such steps, she asserted that it was up to the local authority to tell her when she needed a licence. This position misunderstands the responsibilities on landlords, and cannot constitute a reasonable excuse. Ms McGrath's email to Mr Bolton outlines the steps that the local authority did take to publicise the new scheme, which were appropriate and reasonable, but which do not displace the burden on landlords to understand and comply with the requirements upon them. In reality, it merely adds to a claim of ignorance a claim that someone else was responsible for dispelling the Respondent's ignorance.

26. As to the statement on the local authority's website, we do not think this changes the situation. In the first place, it is not a statement of policy by the local authority. Rather, it appears as a late addendum to a privacy notice which is concerned with the use by the local authority of information about landlords in the hands of the authority. On its face, it would be obviously unwise for a landlord to assume that they could rely on it, at least without further enquiry. This consideration alone is sufficient for us to conclude that it does not amount to a reasonable excuse for not securing a licence.

27. But in any event, there was no evidence, including her oral evidence, from the Respondent that, as a matter of fact, she did see and rely on that statement at any time either before or after the letter to her from Ms McGrath in February 2021.

28. Decision: The Tribunal is satisfied beyond a reasonable doubt that the Respondent committed the offence in section 95(1) of the 2004 Act during the relevant period.

The maximum RRO

29. By sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

30. The period claimed for was from 1 May 2020 to 30 April 2021. The Applicant was in receipt of Housing Benefit. The total rent minus the Housing Benefit came to £3,008. The calculation was agreed (the Respondent having corrected the Applicant's initial miscalculation).

31. *Decision*: The maximum RRO is £3,008.

The amount of the RRO

32. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord.

33. Mr Bolton submitted that the evidence showed a lack of care for the safety and wellbeing of the tenants and of compliance with the obligations on a landlord. He took us to a copy of a letter to the Respondent from Ms McGrath following her inspection of the property at an earlier date than the relevant period, on 10 January 2020.

34. The letter states that there is a need to employ a "damp specialist company" to carry out a survey, referring specifically to condensation and an out-pipe, which, Ms McGrath writes, appears to be causing damp. In relation to damp, the letter goes on to discuss fixed heating in the bathroom and the installation of an extractor fan.

35. In addition, the letter refers to reports of leaks from the boiler and from the lavatory waste pipe. It also refers to the need to employ a pest control operative to deal with mice; and the renewal or replacement of kitchen units.

36. Mr Bolton pointed to WhatsApp exchanges preceding the inspection which, he contended, showed that the Respondent was aware that the boiler was unsafe.

37. Mr Bolton also alleged that the Respondent had been dishonest in respect of possession proceedings. In proceedings commenced in December 2019, she had claimed that there was no gas boiler in the premises, in order to avoid producing a gas safety certificate in those proceedings. Those proceedings were unsuccessful.

38. At some point, in connection with the inspection in January 2020, an improvement notice had been served by the local authority. Ms McGrath had, in her email to Mr Bolton, given her view there had been a lack of co-operation from the Respondent. Mr Bolton noted that the Respondent referred to enforcement proceedings in relation to the improvement notice in her bundle. He submitted that even after she was made aware of her obligations as a landlord, she persisted in refusing to co-operate to the extent that enforcement proceedings were instituted. Our understanding was that, at the time of the hearing, an appeal against the enforcement notice was outstanding.

39. For the Tribunal, Mr Fonka clarified with Mr Bolton that the local authority gave the Respondent the opportunity to remedy the issues in the form of Ms McGrath's letter, and that the reason for the improvement notice was her lack of co-operation. Mr Fonka put it to Mr Bolton that the Tribunal might conclude from this that the original

faults were not of a very serious nature, as the opportunity for voluntary rectification was made available, rather than the local authority immediately taking enforcement action, a point Mr Bolton accepted.

40. In addition to these specific points, Mr Bolton invited us to conclude from extracts from WhatsApp exchanges in the bundle that whenever the tenants made reasonable requests, the Respondent was dismissive and obstructive.

41. The Respondent's submissions in relation to the gas certificate were somewhat unclear. We think her concluded submission was that she had always had a gas safety certificate, but there may have been a "gap" when she did not. At one point, she indicated that the gap was a result of the difficulties during the early stages of the pandemic. She said she had not produced the gas certificates in the bundle as she had thought it unnecessary.

42. In respect of the possession proceedings, the Respondent said that she did have a gas certificate at that point, but had simply made a mistake on the form and ticked the wrong box. She appeared to object that Mr Bolton raised the issue, on the basis that it related to different proceedings.

43. The Respondent forcefully rejected any suggestion that the boiler had been unsafe. She questioned whether the boiler was leaking (as stated in Ms McGrath's letter), asserting that if a boiler leaked, it would not work. Rather, she suggested that the tenants were harassing her with complaints.

44. In respect of the extractor fan in the kitchen, she said she had replaced it three times, as a result of damage by the tenants. Again, she accused the tenants of damaging the extractor fan and then complaining to the council.

45. Her position was that she had, in fact, rectified all the matters specified in Ms McGrath's letter, and therefore questioned the local authority's enforcement action.

46. She objected that the tenants routinely complained about the property whenever she sought rent from them.

47. The respondent agreed that there was condensation in the house, but insisted it was caused by the tenants not opening windows and drying clothes in the house. She referred us to a report by a company called Prokil Damp and Timber Specialists, dated 21 July 2021, which found no evidence of rising or penetrative damp, and said that "mould formation is usually caused by condensation due to lack of ventilation and poor heating management". The report recommended that a dryer

be provided to discourage hung drying. We asked whether the Respondent had done so, and she said she had not.

48. The Respondent made other allegations of damage, mostly of a general nature. One she specified was that the tenants allowed excess water on the bathroom floor, damaging downstairs ceilings.

49. In her statement, the Respondent said that the Applicant and her husband had paid rent late or not at all. She produced a schedule covering the period from December 2019 to February 2022. This showed that, in the period up to July 2021, the tenants were not in arrears at all, but had frequently been late with the rent, albeit it was always paid during the course of the month in which it fell due.

50. Thereafter, the tenants did fall into arrears, which, by February 2022, amounted to £6,573. The Respondent said that the tenants had stopped paying her rent from the time the RRO application was made. In his reply, Mr Bolton said that, at that time, the Respondent had applied for the Housing Benefit to be paid directly to her. Because the Applicant's husband's income fluctuated, however, this meant that the Applicant did not know how much rent was payable each month. As a result of a lack of communication from the Respondent, it was not possible to accurately pay the remainder of the rent after Housing Benefit had been accounted for.

51. As to her financial circumstances, the rental income from the house was her only income. Initially, she said she was routinely overdrawn. She produced screen shots showing 12 texts from her bank saying she was overdrawn, from December 2019 to November 2021. She said that she could only manage by getting help from her brother.

52. She had produced bank statements covering the period from 9 February 2021 to 8 August 2021 from an HSBC current account (the same as that to which the texts related). None disclosed an end-of-period overdraft. We looked at the statements with her as she was making her submissions, and she identified a series of payments described as "internet transfer" as being from her brother. The way in which this occurred was that, initially, the Tribunal identified one of these payments, and asked if that was the payment from the brother. She said that it was. We then want through several further pages, and she affirmed each time that the "internet transfer" was a payment from her brother. These ranged from £300 to £1,500, and over the period amounted to £8,310, a calculation we made after the hearing. We also calculated the similarly coded internet transfers out of the account, which totalled £3,700.

53. However, Mr Bolton, in his reply, put it that the three letter bank code relating to these transfers indicated that they were transfers between

bank accounts in the Respondent's name, not transfers from another's account.

54. Given this was a factual issue, we asked the Respondent to respond. The Respondent said that she did keep money in another account to pay her mortgage, and transferred money from that account into this. She expressly confirmed at this point that the "internet transfer" payments were not from her brother, but rather from this other account of hers.

55. She maintained, however, that there *were* payments from her brother. She now told us that the payments from her brother were marked with his name, followed by "brother". She then modified that, and said that other payments marked as from members of her family ("sister" and "Apa") also originated from her brother. On that basis, there were payments of between £30 and £500 from her brother (often identified as another family member). Again after the hearing, we calculated the total of "family" payments in at £1,680 and out at £2,138.

56. We asked her why, earlier, she had affirmed that the "internet transfer" payments were from her brother. She said that she had not had the relevant document open at the time, but that now she did, she could see that they were not.

57. She took us to partially copied summaries of her tax returns for 2019/20 and 2020-21. The first showed a total tax liability of £30.00, but did not show a profit figure. For 2020/21, her profit was given as £14,008, on which she was assessed for income tax of £301. She said that that was subsequently amended to £30, but she had not produced documentary evidence of this in error.

58. In her statement, she said she had also run up credit card debts, but did not provide any documentary support. She said orally that she thought her debt was about £4,000.

59. Her now eight year old son had become ill in January 2020, and was subsequently diagnosed with a rare blood cancer, which required frequently visits to hospital. Her older son was 14 years old. She was a single mother.

60. We turn to our factual conclusions.

61. We reject the Respondent's suggestion that Ms McGrath had improperly conspired with the Applicant and her husband to procure an RRO, or to generally do the Respondent down. Ms McGrath's duty is to use lawful means to secure good standards in private rented accommodation in Waltham Forest, and, as it appears to the Tribunal,

that is what she sought to do. Rather than reflecting on the tenants, that the Respondent made this allegation reflects poorly on her.

62. It is clear that relations between landlord and tenants are very poor. That colours our conclusions as to the conduct of the parties. It is difficult, and, ultimately, not profitable, to finely distinguish the rights and wrongs of each. In relation to most, we doubt there is much either way. It is common for properties of this sort to suffer from condensation, and easy for each party to accuse the other of causing the problems. In this case, it may be that there is some justification in the Respondent's complaint that the tenants could have (sometimes) dried washing in the garden rather than hanging it in the house. But contrariwise, the Respondent failed to provide a dryer, a recommendation of the specialist company she herself engaged. That the tenants deliberately or negligently destroyed a succession of kitchen extractor fans seems implausible; but it is possible that they were insufficiently careful to avoid water damage from the bathroom.

63. So our conclusion as far as what one might call the day to day condition issues (some of which we have not detailed, such as a dispute about a thermostat), is that the appropriate way to proceed is that there is little to distinguish between the conduct of the parties.

64. We do, however, draw from this history a clear impression that the Respondent is a strong-willed person with an often inappropriate approach to her proprietary rights over a house that she lets out to others as a home.

65. We turn to the matters identified by Ms McGrath following her inspection in January 2020. As we prefigured during the hearing, our general conclusion is that the matters identified were substantial and important. Nonetheless, they were far from being at the most serious end of the scale, an assessment endorsed by the way it was dealt with by the local authority. In particular, we do not think it can be reasonably said that they amounted to an imminent safety risk. However, we also consider that Ms McGrath's conclusion that the Respondent was not co-operating fully appears to us to be a reasonable one. We note that at the time of the hearing, the Respondent's appeal against the improvement order was outstanding, and we put only limited weight on these conclusions.

66. Mr Bolton impugned the Respondent's honesty in relation to the possession hearings, on the basis of her treatment of the need for a gas safety certificate. She claims this was an accident. Before us, she asserted that transfers from one of her accounts to another were in fact payments to her by her brother. Again, her explanation was that this was a mistake.

67. We consider it more likely than not that in the latter case, when we asked her if the internet transfer payments were from her brother, she took dishonest advantage and said they were, or at any rate, even if she made an initial mistake, she failed to honestly correct it. We note that the payments in from the other account were much larger than those from family members (which were, indeed, negative). We consider that this does amount to poor conduct which we should take into account. With some hesitation, we do not feel we can come to the same conclusion in relation to the possession proceedings. But at best, we consider the question an open one, in the absence of any proof of gas certificates.

68. In respect of her financial position, she has been less than open about her financial circumstances. She disclosed a limited number of statements from one bank account. Those statements did not show her to routinely be in overdraft at the end of each month, as she asserted. She did not disclose any details of the other account from which she transferred money to the current account, nor the credit card statements that she said showed her in substantial debt.

69. Further, in respect of the current account, she said that she only managed with the help of her brother. But our calculations on the basis which she finally adopted as accurate, during the period disclosed, she actually paid out more to her brother than he paid to her (a net payment out of £458).

70. Nonetheless, we do accept that overall, the Respondent is a single parent who at least largely lives off the proceeds of the rental of this one house. The gross annual rent would be £20,400, which is probably at least broadly consistent with the reported profit of about £14,000 in the one summary of a tax return which gives a figure.

71. The most significant issue in respect of the tenants' conduct is in relation to paying the rent. Tenants should pay the rent in full and on time. During the earlier part of the period, the tenants paid the full rent, but frequently late. Having said that, this is moderated by the fact that they did, until July 2021, always pay within the relevant month, albeit sometimes late in the month. Much more significant are the arrears that have built up since then. We heard Mr Bolton's explanation for that, and so at least to some degree, the payment of the correct rent has been a casualty of the poor relationship, and consequently communication, between landlord and tenant. Nonetheless, the figures suggest that no effort has been made to make any payment since September 2021. By that time, it should have been obvious that the tenants were in arrears and that some payments should have been made, if only to keep the arrears at a lower level.

72. In summary, therefore, while some of the allegations and counter-allegations are the sort of disputes that frequently arise between

landlords and tenants when relations are strained, there are significant criticisms to be made of the Respondent's conduct and her management of the property, even if those do not fall at the highest end of the spectrum. The tenants' conduct in respect of payment of the rent before July 2021 was flawed, but rather marginally. Since then, it has been poor, but there is some explanation, and the failure to pay does not relate to the majority of the rent paid by Housing Benefit. Nonetheless, it is to be set against the aggravating features of the landlord's conduct.

73. We also conclude that this is a case in which we should have some regard to the Respondents financial and personal position. We take them into account as countervailing factors, arguing for a lower RRO.

74. Further, although the Respondent effectively lives off the proceedings of the tenancy, she does not fall into what is generally understood to be the category of "professional landlord". That term is usually reserved for landlords, often corporate landlords, who invest in a significant way in a number of rental properties from which they make a substantial profit. In the authorities on RROs, that is how the category has been understood. This does not excuse her from her failure to take proper steps to understand and comply with her legal responsibilities as a landlord, but it does mean that the amount of the RRO should not be increased to reflect "professional landlord" as an aggravating factor.

75. In assessing the amount 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.

76. Weighing up these factors in the light of the reported decisions, we conclude that the RRO should be set at 70% of the maximum allowable. We have slightly rounded the exact figure.

Application for reimbursement of Tribunal costs

77. Mr Bolton 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

78. 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.

79. 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.

80. 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.

81. 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 July 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.