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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/HMF/2022/0158**
Property	**:**	**Flat 56, 30 Barking Road, E16 1GQ**
Applicants	**:**	**Alexander Ray** **Summer White** **Jennifer Tolhurst**
Representative	**:**	**Cameron Neilson of Justice for Tenants (Ref : REF 15001)**
Respondent	**:**	**Gopiraj Krishnasamy**
Representative	**:**	**Clare Anslow of Counsel**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Professor Robert Abbey** **Tribunal Member Mr. A. Fonka MCIEH, CEnvH, M.Sc.(Professional Member)**
Venue and date of hearing	**:**	**By a face-to-face hearing on 9 January 2023**
Date of decision	**:**	**16 January 2023**

DECISION

Decision of the tribunal

(1) The Tribunal determines that a rent repayment order be made in the sum set out below in favour of the applicant, the Tribunal being satisfied beyond reasonable doubt that the respondent has committed an offence pursuant to s.72 of the Housing Act 2004, namely that a

person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

(2) The total net amount of the rent repayment order is **£9880.02** for the rent paid by the applicant to the respondent.

Reasons for the tribunal's decision

Introduction

1. The applicants made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as the **Flat 56, 30 Barking Road, E16 1GQ**. The applicants seek a Rent Repayment Order (RRO) for the total sum of £19760.04. The respondent is the long leaseholder of the property. The respondent's interest is registered under title number TGL374271. The property is located within the London Borough of Newham ("Newham Council"). The respondent held a selective licence for the property under licence number 18/01957/HOSELE ("the Selective Licence"). The Selective Licence was/is valid from 1 March 2018 – 28 February 2023. It was for a maximum of five people from one household.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions arising out of the Covid-19 pandemic.

3. The hearing of the application took place on Monday 9th January 2023 by a face-to-face hearing with the applicant represented by Mr Neilson from Justice for Tenants and the respondent was represented by Ms Anslow of Counsel.

4. Both parties provided extensive trial bundles to assist the Tribunal at the time of the hearing. These bundles consisted of copy deeds documents, an assured shorthold tenancy agreement for the property, email letters and other relevant copy documents relating to this dispute.

5. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

6. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by

all the parties. Therefore, the tribunal had before it electronic/digital trial bundles of documents prepared by the applicants and the respondent, both in accordance with previous directions.

Background and the law

7. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the Tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that a person/company has committed an offence described in Part two of the Act and in that regard section 72 of the 2004 Act states: -

> *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*

8. The meaning of a "person having control" and "person managing" is provided by s.263 of the Housing Act 2004. "Person managing" is defined at subsection (3) as:

> *"[…] the person who, being an owner or lessee of the premises —*
>
> *receives (whether directly or through an agent or trustee) rents or other payments from—*
>
> *(i) in the case of an HMO, persons who are in occupation as tenants or licensee of parts of the premises;*
>
> *(ii) in the case of a house to which Part 3 applies (see section 79(2)),*

persons who are in occupation as tenants or licensees of parts of

the premises, or of the whole of the premises;

would so receive those rents or other payments but for having entered into an arrangement [...] with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments."

9. Under section 41 (2) (a) and (b) of the 2016 Act 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. The Respondent at the hearing confirmed that he concedes that during the relevant period:

(i) He was the immediate landlord of the Applicants.

(ii) He was a person having control of the subject property for the purposes of section 263 of the Housing Act 2004.

(iii) The subject property fell within an additional licensing area as designated by Newham Council.

(iv) He did not have the correct type of licence in place nor did he apply for one.

10. The tenant originally claimed an RRO for the total sum of £19760.04. The applicant supplied to the Tribunal proof of payment shown in the trial bundle. The Tribunal were satisfied that these payments had indeed been made. There were no rent arrears.

The Offence

11. Mandatory licensing is required where an HMO is occupied by five or more persons living in two or more separate households. The 2004 Act also provides for licensing to be extended by a local authority to include HMOs not covered by mandatory licensing. The property is located within an additional licensing area as designated by Newham Council. The additional licensing scheme came into force on 1 January 2018. The designation for the scheme applies to all HMOs that are occupied under a tenancy or licence unless it is an HMO that is subject to mandatory licensing. The property did have a Selective Licence, but that limited occupation to five people from one household. It is accepted by the respondent that under Newham Council's selective

licensing scheme the property required a different form of licence if it was to be rented to people from more than one household (as was the case here).

12. So, in summary the property is situated within an additional licensing area as designated by the London Borough of Newham and was therefore subject to the licensing regime. At the hearing the respondent therefore conceded and admitted that he had not applied for an appropriate license.

13. There being a "house" as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed. The respondent has therefore committed an offence under section 72 of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property.

14. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application.

15. However, the respondent alleges that he ceased to commit an offence on 12 May 2021 by reason of a statutory notification made by the respondent to Newham Council. As such, he argues that the Applicants had until 12 May 2022 to submit their application: the application was not made until July 2022 and was thereby out of time. The applicants submitted that the respondent did not cease to commit an offence until 23 July 2021 – the date the applicants vacated the subject property. It was accepted by the parties that if the Tribunal makes a determination that the respondent made a notification under section 62(1) of the Housing Act 2004 on 12 May 2022, this application is time-barred.

The tribunal's determination

16. The Tribunal was required to determine if the RRO was time barred. The appropriate limitation period is defined in section 41(2)(b) of the Housing and Planning Act 2016 which provides that:

> *"(2) A tenant may apply for a rent repayment order only if — (b) the offence was committed in the period of 12 months ending with the day on which the application is made".*

17. The Respondent submits that this application is time-barred by virtue of section 72(4)(a) of the Housing Act 2004 which provides that:

"(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), ….

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

18. Section 62(1) of the Housing Act 2004 provides:

19. *"(1) This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed."*

20. Section 75 of the Housing Act 2004 establishes additional consequences for a landlord operating an unlicensed HMO:

"75 Other consequences of operating unlicensed HMOs: restriction on terminating tenancies (England)

(1) No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

(2) In this section—

a "section 21 notice" means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);

a "shorthold tenancy" means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of that Act;

"unlicensed HMO" has the same meaning as in section 73 of this Act."

21. Section 73 of the Housing Act 2004 provides:

"73 Other consequences of operating unlicensed HMOs: rent repayment orders

(1) For the purposes of this section an HMO is an "unlicensed HMO" if—

(a) it is required to be licensed under this Part but is not so licensed, and

(b) neither of the conditions in subsection (2) is satisfied.

(2)The conditions are—

(a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));

(b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).”

22. The actions required when a landlord notifies a local housing authority of their intention to take steps to resolve a licensing issue must be lawful to constitute a valid notification under section 62(1) of the Housing Act 2004. This was confirmed in a letter sent by Newham Council to the Respondent dated 22 April 2021 in which it stated that:

> *“If you were unaware that this property is in use a HMO, provide documentary evidence to this Department that you have/are actively taking steps to return the property back into use as a single family dwelling i.e. by seeking possession of the property via the correct <u>legal</u> methods, dependant on the type of tenancy or licence that current occupants possess”*

23. In this application, the particular step that the Respondent has taken and communicated to Newham Council is the service of a section 21 notice on the Applicants on 9 May 2021 (“the section 21 notice”). Bearing in mind that the section 21 notice was served prior to 12 May 2021 being the date of the respondent’s alleged s.62(1) notification, at the date of service, the property was still an unlicensed HMO as defined by section 73 of the Housing Act 2004. As such, and in accordance with section 75 of the Housing Act 2004, at the date of service no section 21 notice could be given in relation to the property. The respondent’s service of the section 21 notice in contravention of section 75 was therefore unlawful. This being so, the step taken by the respondent was not lawful and so the “notification” to Newham Council could not constitute a proper section 62(1) notification.

24. Having determined that the application was not time barred the Tribunal had to consider the quantum of the RRO. So, the Tribunal then turned to quantifying the amount of the RRO. The amount of the RRO was extracted from the amount of rent paid by the applicant during the period of occupancy as set out within the trial bundle. In deciding the amount of the rent repayment order, the Tribunal relied

upon the leading authority on the Tribunal's approach to quantum *Acheampong v Roman* [2022] UKUT 239 (LC) at [20]. The Upper Tribunal established a four-stage approach the Tribunal must adopt when assessing the amount of any order:

> *"20. The following approach will ensure consistency with the authorities:*
>
> *a. Ascertain the whole of the rent for the relevant period;*
>
> *b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal is expected to make an informed estimate where appropriate.*
>
> *c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That percentage of the total amount applied for is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:*
>
> *d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)."*

25. So, in *Acheampong* the Upper Tribunal decided that the correct calculation process was first, determine the total rent paid during the relevant period; secondly, deduct any element of the rent which is actually a payment for utilities or other matters which only benefit the tenant (e.g. gas, electricity, internet access); thirdly, assess the seriousness of the offence both in comparison to other types of offence in respect of which a rent repayment order can be made and in relation to the same type of offence; fourthly, assess what proportion of the rent reflects that seriousness; and, finally, make any adjustments necessary (whether up or down) to reflect any wider mitigating or aggravating factors. To produce an RRO that accords with these guidelines the Tribunal will address each item in turn below.

26. At the first stage the applicant is seeking to recover the sum of £19,760.04 for the rent paid for the period between 18 July 2020 and 17 July 2021 on behalf of all the Applicants. At the hearing the respondent agreed this amount and so the Tribunal moved to the second stage

27. With regard to potential deductions the applicants were required under the terms of their tenancy agreement to pay for all utilities and council tax during their tenancy Therefore no deduction from the whole of the rent claimed is appropriate. This was accepted by the respondent at the time of the hearing and so the Tribunal turned to the third stage.

28. The Tribunal sought to consider the seriousness of the offence both in comparison to other types of offence in respect of which a rent repayment order can be made and in relation to the same type of licensing offence.

29. To that end the Tribunal considered the following factors when determining the seriousness of this licencing offence when compared to other licencing offences:

- The length of the offence (*Aytan v Moore* (2022) UKUT 27 (LC) , (*Hallet v Parker* [2022] UKUT 165).
- A lack of process to keep up to date with the legal obligations (*Aytan v Moore* (2022) UKUT 27 (LC) .
- Fire safety breaches (*Acheampong v Roman*), (Aytan v Moore (2022).
- Breach of management regulations.
- Whether the Respondent is a professional landlord (*Aytan v Moore and Wilson v Arrow* (2022) UKUT 27 (LC).

30. The length of the offence was of concern in that it stretched over 22 months from 24 August 2019 to 17 July 2021. Clearly, this is not a brief period and would add to the seriousness of the offence. As for a lack of process the respondent did confirm he had used professional managers and relied upon their expertise. He was also a member of a professional organisation for landlords.

31. In regard to fire safety breaches concerns were expressed about whether or not doors in the property were actually fire doors. It was apparent to the Tribunal that this was a recently built property and that the respondent was the first owner after the block had been built. It therefore seemed to the Tribunal that the doors were most likely to be appropriate fire doors even if they lacked self-closing devices. The tenants did confirm that there were no fire extinguishers at the property or fire blankets. However, there were working smoke alarms,

working CO2 detectors and a sprinkler system. It therefore seemed to the Tribunal that any fire safety breaches were not especially serious or substantial.

32. There was a minor breach of management regulations in that the landlord's name and address was not displayed within the property. The applicants also acknowledged that they had the relevant contact details for the respondent.

33. The respondent in his evidence confirmed that he personally owned and let out six properties and was a director of a company that owned and let out one other property. That property had an HMO licence. Accordingly, the Tribunal were satisfied that the respondent was a business landlord. The Tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC). A professional landlord is expected to know better. From the evidence before it the Tribunal took the view that the respondent was a professional landlord. As was stated in paragraph 26 of *Parker* a lessor who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional: -

> "*Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.*"

34. Having said that, when considering the amount of a rent repayment order the starting point that the Tribunal is governed by is s.44(4), which states that that the Tribunal must "in particular, take into account" three express matters, namely:

> (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.

The Tribunal must therefore consider the conduct of the parties and the financial circumstances of the respondent. Express matter (c) was not particularly relevant as no such convictions apply so far as the respondent is concerned.

35. The Tribunal was mindful of the fact that in *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4). Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties and (b) the financial circumstances of the landlord. We will take these in turn.

36. As to financial circumstances, the respondent asserted that he did not make any profit from the subject property. The relevance of this was expressly rejected by the Upper Tribunal in *Vadamalayan v Stewart & Ors* [2020] UKUT 0183 (LC) as an appropriate ground for the making of a deduction under section 44(4)(b) of the Housing and Planning Act 2016:

> *"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".*

37. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order.

38. Finally, we turn to the conduct of the parties. The respondent did not make any allegations of poor conduct against the applicants who have complied with the terms of their tenancy agreement and paid all rents due. With regard to the conduct of the respondent, as the Upper Tribunal noted in *Dowd v Martins* [2022] UKUT 249 (LC) at [34], mere compliance with a legal obligation by a landlord does not constitute good conduct – it is simply what is to be expected.

39. It was the case that the landlord should have correctly licenced this property but did not. This is a significant factor in relation to the matter of conduct. It remains the case that this property should have been correctly licenced and regrettably it was not. Therefore, the Tribunal accepts that this aspect of the conduct of the parties should be taken into account when considering the amount or level of the rent repayment order necessary in this case.

40. Consequently, and overall, the Tribunal considered that the property was in good order and was in a fire safe condition. There were technical breaches in that regard but these were not as potentially risky as they might have been given the installation of a sprinkler system. Therefore, bearing in mind all these factors, the Tribunal started at a 50% level of the rent. It then decided that there were no further reductions that might be appropriate, proportionate or indeed necessary to take account of the other factors in the Act so far as the respondent is concerned. Consequently, the total net amount of the rent repayment order is £9880.02 for the rent paid by the applicant to the respondent

41. Finally, the respondent is ordered to repay the applicants Tribunal fees for the application and hearing in the combined total of £300.

Name:	Judge Professor Robert Abbey	Date:	16 January 2023

Annex

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if—

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

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

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

(3)A person commits an offence if—

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

95 Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
(2)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 90(6), and
(b)he fails to comply with any condition of the licence.
(3)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 86(1), or
(b)an application for a licence had been duly made in respect of the house under section 87,
and that notification or application was still effective (see subsection (7)).
(4)In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
as the case may be.
(5)A person who commits an offence under subsection (1) is liable on summary conviction to a fine .
(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(6A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
(6B)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
(7)For the purposes of subsection (3) 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 (8) is met.
(8)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.
(9)In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

s41 Housing and Planning Act 2016

Application for rent repayment order

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

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

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

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

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

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

(b)the authority has complied with section 42.

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

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2)....
(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.