FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	:	**(1) LON/00AG/HMF/2020/0057** **(2) LON/00AG/HMF/2020/0070**
HMCTS code	:	**Video**
Property	:	**Flat 2, 41 Calthorpe Street, London WC1X 0JX**
Applicants	:	**<u>Application (1)</u>** **Melissa Gurusinghe (A)** **Ali Mahomed (B)** **Samuel Hackwood (C)** **Ahish Kaushik (D)** **<u>Application (2)</u>** **Caitlin Haggerty (A)** **Louise Karlsson Kihlberg (B)** **Melissa Gurusinghe (C)** **Kiran Kaur Dhaliwal (D)**
Representative	:	**Ms C Sherratt of Justice for Tenants**
Respondents	:	**<u>Application (1)</u>** **Michael Bolt** **<u>Application (2)</u>** **Michael Bolt and Drumlin Limited**
Representative	:	**Mr Hart, of Freeman Solicitors, for both Respondents**
Application	:	**Application for a rent repayment order by a tenant**
Tribunal	:	**Tribunal Judge Prof R Percival** **Mr P Roberts DipArch RIBA**
Date and venue of Hearing	:	**25 April 2022** **Remote**
Date of Decision	:	**8 September 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

The Tribunal orders that:

(1) Mr Bolt is not a proper respondent in relation to either application, and is removed.

(2) Application (1) (LON/00AG/HMF/2020/0057) is struck out.

(3) A rent repayment order be made in respect of each applicant in application (2) (LON/00AG/HMF/2020/0070) individually in the sum of £2,578.

(4) The Respondent reimburse the Applicants the application and hearing fees in respect of this application in the sum of £300

The applications and procedural background

1. This Decision concerns two applications 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. Both applications relate to the same property, but to different relevant periods, and different tenants, save that Ms Gurusinghe appears in both applications.

2. The flat is in a converted three storey house. It comprises four bedrooms, a kitchen, a bathroom and a shower room.

3. Application (1) was dated 24 April 2020, and application (2) 23 April 2020. The landlords in respect of both were initially identified as Cheshire House Developments Ltd (the freeholder of the premises) and Mr Michael Bolt (who is named as the landlord on the applicants' tenancy agreements). Application (1) related to the period from 10 September 2018 to 9 September 2019. The relevant period in relation to application (2) was 10 September 2019 to 5 February 2020.

4. In application (1), directions were issued by Judge Hawkes on 18 September 2020, with a final hearing fixed for 7 January 2021. In

application (2), directions were issued by Judge Nicol on 13 December 2020, with a final hearing on 4 March 2021.

5. On 1 December 2020, the Applicants (in respect of both applications) applied to substitute Drumlin Ltd in place of Cheshire.

6. On 7 January 2021, the Tribunal (Judge H Carr and Ms S Coughlin) dealt as a preliminary issue with the question of whether to substitute or add Drumlin Limited as a respondent to both applications. Drumlin, it was agreed, held a long leasehold interest in the property during the whole of the time covered by both applications. By decision dated 8 January 2021, the Tribunal decided to consolidate application (1) with application (2), so that they would be heard together. Having heard argument, the tribunal determined that it had no jurisdiction to add Drumlin Limited as a respondent to application (1), as the 12-month limitation period for doing so had expired by the date when the application was made, but that it would add Drumlin Limited to application (2), where no such limitation issue arose.

7. The applicants in application (1) appealed to the Upper Tribunal. By a decision of HHJ David Hodge QC dated 26 October 2021, the Upper Tribunal dismissed the appeal and confirmed this Tribunal's decision of 8 January 2021.

8. On 17 December 2021, further directions were given for the hearing of the conjoined applications. For the avoidance of doubt, Cheshire were removed as respondent from both applications.

The hearing

Introductory

9. Ms Sherratt of Justice for Tenants represented the Applicants in both applicant groups. Mr Hart of Freeman solicitors represented both Respondents on both applications.

Preliminary issue: strike out application

10. Mr Hart applied to remove Mr Bolt as a Respondent to both applications, and (therefore) also to strike out the application in respect of the first tenancy group.

11. Mr Bolt's case was that while he had been identified as landlord in respect of the relevant tenancy agreements, that had been a mistake on behalf of the managing agents. The tenancy agreement produced by the first applicant group was not signed, and that for the second was signed, but not by Mr Bolt. At all times, Mr Hart argued, the relevant landlord was Drumlin, the owners of the leasehold interest.

12. Mr Bolt was extensively cross examined by Ms Sherratt and answered questions from the Tribunal. We also considered the limited material pertinent to the issue available from the Applicants in the bundle.

13. At its highest, the evidence of the Applicants went to show that they thought that Mr Bolt was the landlord; and they had some interactions with him in which it appeared he was acting as, or on behalf of, the landlord.

14. It was not contested that Mr Bolt is in control of Cheshire, which owns the freehold. Mr Bolt said he had no interest in Drumlin. Some of the interactions he explained as relevant to his responsibilities, through Cheshire, as freeholder. In respect of other matters, he said that he had been asked to help out, as Drumlin relied on the managing agents, who had been found to be lacking. Still others he denied.

15. He did add in cross-examination one matter of fact that was not covered in his witness statements. He said that in 2000, as part of a settlement, he "disposed of" the property and another flat in the same building as part of a long term trust for the benefit of his family. He remained as freeholder, but, as a consequence of the requirements of the trust, he had no interest in, and took no benefit from, Drumlin.

16. It is not necessary to rehearse in any further detail the evidence we heard.

17. Ms Sherratt argued on two bases that Mr Bolt was a proper Respondent. The first was that we should infer from the evidence that there was an undisclosed tenancy agreement between Mr Bolt and Drumlin, and that Mr Bolt then let the property to the Applicants.

18. The second, alternative basis was that Mr Bolt was fixed with the tenancy, on the basis of authorities cited by Ms Sherratt.

19. As to the first, we accept as a matter of fact that the tenants thought that Mr Bolt was their landlord. Ms Sherratt also submitted that we should find that he effectively acted as their landlord. An important element in the evidence she relied on in this connection was that he was referred to as "the landlord" in communications from the managing agents in connection with problems with the roof.

20. While we accept that these references were made, we do not accept the inference that Ms Sherratt invites us to draw from them. It is more likely than not – indeed, it is highly probable – that the roof was not demised to Drumlin. As the controller of Cheshire, the freeholder, it is natural and reasonably accurate to refer to Mr Bolt as "the landlord" in that connection.

21. There were, however, also other occasions on which the managing agents referred to Mr Bolt as the landlord in connection with, for instance, a washing machine, and other matters clearly the concern of the immediate landlord. Mr Bolt's evidence was that he stepped in to assist Drumlin when, on his account, the managing agents were shown to be incompetent.

22. But the principle matter relied on by Ms Sherratt was Mr Bolt's identification as landlord on the assured shorthold tenancies. Mr Bolt's case was that that was merely a mistake by the managing agents. Mr Hart submitted that neither agreement was signed by Mr Bolt. The first was not signed at all. The second was signed, but it was Mr Bolt's evidence that the signature was not his. We do not think it is straying into an area properly of expert evidence (of which there was none) to note that the signature appearing on the tenancy agreement bears no similarity with that of Mr Bolt as it appears on his witness statements.

23. On balance, we prefer Mr Bolt's evidence. Mr Bolt was (via Cheshire) the freeholder, and it appears he had an *informal* interest in Drumlin's success (a point that may be explained by the fact that his family, according to his oral evidence, benefitted from the property via Drumlin). It is not a freakish mistake for the managing agents (whose competence and care has been brought into doubt in the evidence) to make, and, as Mr Hart noted, it is important that Mr Bolt did not sign either agreement.

24. The question, then, becomes whether, on the facts as we have found them, we should infer that Mr Bolt's evidence is false and there was an undisclosed agreement between him and Drumlin. Our conclusion is that these facts alone are not sufficient to found such an inference.

25. We remind ourselves that we are considering an application to remove Mr Bolt as a Respondent, and to strike out application (1). While on the facts, whether Mr Bolt is a landlord or not would be relevant to whether he committed the criminal offence alleged under section 72(2) of the 2004 Act, this application is one to which the normal civil standard of proof attaches.

26. We regard it is intrinsically implausible that Mr Bolt would be a party to such an agreement. To have done so would have undercut, for no apparently good reason, the arrangements he crafted in 2000 to ensure that he was not involved or interested in (in a formal sense) the letting of the two flats. Mr Bolt asserted that to have done so would have had adverse tax consequences for him or his family. This seems to us to be likely, and to have been the reason the arrangement was entered into in the first place.

27. Of course, it may be that the circumstances which led Mr Bolt to enter into the arrangement in the first place have now changed, and it would

now be in his interests to ignore them, but there was absolutely no evidence before us that would justify us in coming to such a conclusion.

28. Secondly, if it were the case that Mr Bolt entered into an agreement with Drumlin, not only would he be lying to us, but it would also in all likelihood amount to fraud, including probably fraud on the revenue. While such an allegation does not require a standard of proof formally higher than more likely than not, the more extreme an allegation, the more compelling the evidence needed to reach the normal civil threshold (*In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, *In re B (Children)(Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2009] 1 AC 11). The evidence before us certainly does not reach that level.

29. Finally, if we are wrong in this conclusion, in the next stage, the Applicant would have to prove to the criminal standard that Mr Bolt was guilty of the offence in section 72. That he was the landlord is an essential element of that offence, and we would have to be sure of that beyond a reasonable doubt. Even on the hypothesis that we are wrong to find that on the balance of probabilities he was a landlord for the purposes of the procedural application, it would be very hard to convince a Tribunal that the inference of the agreement is safe beyond a reasonable doubt.

30. In pursuing her second basis for submitting that Mr Bolt is the landlord and a proper Respondent, Ms Sherratt's relied on *Muneer Hamid (t/a Hamid Properties) v Francis Bradshaw Partnership* [2013] EWCA Civ 470 and *Montgomerie v UK Mutual Steam Ship Association Ltd* [1891] 1 QB 370.

31. The passage relied on in the former allowed extrinsic evidence where the identity of a contracting party was in issue, but since we are engaged on a process of considering extrinsic evidence, it does not advance the Applicants' case. The passage cited in the second case refers (obiter) to a number of common law principles in the law of agency.

32. But in any event, we have found as a fact that Mr Bolt did not sign either contract, and that the identification of him as the landlord in the contact was an error on the part of the managing agent which provided the form of the agreement. In those circumstances, there can be no question of Mr Bolt being fixed with liability under the contract, whether as agent of an undisclosed principal or principal.

Decision on strike out application

33. Mr Bolt is not a proper Respondent to either application, and we remove him under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, Rule 10(1). As a result, in respect of application

(1), there is no prospect of the application succeeding, and we strike it out under Rule 9(3)(e) of the 2013 Rules. As the Applicants have had the opportunity to make representations in the hearing before us, the strike out is final.

The alleged criminal offence and maximum RRO

34. As a result of the decision in paragraph [33] above, only application (2) continues, and references hereafter to the applicants and the application are to be construed accordingly.

35. Mr Hart did not contest that the property was subject to an obligation to secure an HMO licence, and that no licence was held by Drumlin at the relevant time. Mr Hart said that the Respondent did not seek to persuade the Tribunal that there was a reasonable excuse (section 72(5) of the 2004 Act).

36. It was not contested that an application was made for a licence on 5 February 2020, and accordingly the Respondent ceased to commit the criminal offence on that date (section 72(4) of the 2004 Act).

37. On the uncontested facts, we accordingly find, beyond a reasonable doubt, that the Respondent was committing the offence under section 72(2) of the 2004 Act between 10 September 2019 and 5 February 2020.

The amount of the RRO

38. 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.

39. Mr Hart agreed the figures for the rent paid by the Applicants during the relevant period, and that those constituted the maximum RROs. For each of the Applicants, the figure was £3,222.66.

40. 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.

41. It was convenient to hear the evidence in relation to the Respondent's financial circumstances first.

42. Mr Andrew Brown, a director, gave evidence on behalf of Drumlin from his office in the Isle of Man. His professional background was in the management of offshore corporate trusts, and he was a director of between 70 and 90 companies of varying sizes. A small number were property companies.

43. Mr Brown's evidence was that the company owns two flats at 41 Calthorpe Street, and has no other assets. It is reliant on rental income from the two flats. It currently held no cash reserves as a result of a shortfall in income as a result of non-payment of rent, and legal costs, in connection with the other flat at 41 Calthorpe Street. An award of an RRO would result in the directors selling the property.

44. By the statement in the submissions that Drumlin was not a "professional landlord", it was meant that it was not a large commercial organisation. Mr Brown accepted that Drumlin was a commercial company whose only business was being a landlord of the two flats.

45. In his witness statement, Mr Brown had said that it had not proved possible to secure further finance from Drumlin's mortgagee as the company now held an RRO licence. In his oral evidence, Mr Brown said that Drumlin had now paid the mortgage. He had gone back to the mortgage lender to secure new finance, and that had been refused because the lender would only lend to landlords with larger portfolios where there was an RRO in place for a single property.

46. Mr Brown said that there was a valuation on the two flats of £1.5 million in the company's accounts, but insisted that it would be necessary to sell the property if an RRO were to be made, given the lack of cash reserves. He referred to other creditors, which he explained related to legal bills for the possession action in respect of the other flat.

47. In answer to Ms Sherratt, Mr Brown said that he had not provided documentary evidence of the company's financial position because he had not been asked to do so.

48. We do not consider that there is anything in the Respondent's financial position, insofar as it was revealed, to justify a reduction in the amount of an RRO. As Ms Sherratt observed, we were not provided with any significant documentary evidence of the company's financial position. It seems unlikely to us that the company could not raise sufficient finance on assets it valued at £1.5 million to satisfy an award of about £12,000. We regard Mr Brown's defence of that position as unconvincing. But in any event, if the directors decided to sell the property, then of course they would be amply in funds to pay any award. That would be a commercial decision for the directors to make in the best interests of the company.

49. We turn to the conduct of the parties.

50. The issues between the parties related to fire safety matters; the replastering of a hole in Ms Dhaliwal's bedroom, issues relating to access to the property, including by tradespeople etc without notice; the repair of a window above the external door; the state and repair of the

lavatory/bathroom; the general condition of the property; and whether the Respondents (through either the managing agents or Mr Bolt) expressed themselves inappropriately. There were other issues relating to application (1) which had some continuing impact on, particularly, Ms Gurusinghe during the current application, relating to her security deposit, but we do not consider that that can properly be related to the conduct of the landlord in relation to application (2).

51. Ms Gurusinghe's evidence was that there were no fire safety instructions or signs, and no fire alarm on the second floor, until towards the end of the tenancy when the issue of an HMO licence was raised, and no fire doors. This was a cause for concern to her, she said, as her bedroom was next to the kitchen, and the (non fire-) door swung open of its own accord.

52. The Respondent's evidence was that there were fire doors throughout the flat, except to the bathroom. Mr Bolt said that listed building restrictions meant that the original doors had to be retained, but were adapted so that they met fire door standards. Mr Bolt also maintained that there was a wired-in fire alarm on the second floor.

53. The Respondent produced a Fire Risk Assessment report dated 10 September 2020 (so some months after the relevant period), which, the Respondent argued, showed that means of escape and other fire safety issues were in a reasonable condition.

54. At the commencement of the tenancy, the tenants found workmen in what was to be Ms Dhaliwal's bedroom, apparently doing work to remedy dampness. The work involved the removal of the plaster – what the tenants described as a large hole in the wall.

55. Mr Bolt's evidence was that this work was required to deal with dampness caused by damage to the roof prior to the tenancy. There had been no lack of notice.

56. There were general complaints from the tenants that contractors would arrive without any, or adequate, notice, and a particular issue that keys to the flat had been left by contractors in an open cupboard visible from the outside of the building for a month.

57. These allegations were generally rejected by Mr Bolt, but he did complain in his witness statement that the tenants had denied access to, for instance, the surveyors at the end of the tenancy.

58. In October 2019, the window above the communal door was broken by a road traffic accident. The tenants evidence was that the broken glass was dangerous, and it took a week for the Respondent to organise a temporary repair, using wood, and a further three weeks to reinstate

the glass. The Respondent's evidence was that this latter period was two weeks, not three.

59. There were two related disputes in relation to the lavatory. The WC became blocked and flooded on at least three occasions between September and November 2019, and had to be cleared by contractors. The Respondent blamed the tenants, Mr Bolt apparently saying that they were using too much lavatory paper and inappropriately flushing sanitary products. The tenants' evidence was that they used a receptacle for sanitary products and did not flush them.

60. Secondly, as a result of the problems with the WC, the Respondent undertook work in the bathroom. It was agreed that this would take place over the Christmas 2019, when the tenants would be absent. The work included the formation of a low plinth upon which the WC stood, which, after a delay, was painted with a rubbery preparation that took a a long time – perhaps three days – to dry, during which time the WC was not usable.

61. The Respondent's case was that the second set of works took place as agreed over Christmas, and as a result it was confirmed that the blockage was the result of the flushing of wet wipes and sanitary products.

62. The painting of the plinth did not prevent the use of the WC or bathroom, according to the Respondent.

63. There were some complaints about the general state of the property in terms of excessive wear, poor floor surfaces and furniture. The Respondent contended that the matters complained of were features of a regency listed property, and generally considered desirable.

64. The tenants complained that those they dealt with – Mr Bolt and the employees of the managing agents – were on occasion rude, aggressive or sarcastic. Mr Bolt rejected these allegations in respect of his own behaviour, and assumed that the same was true in respect of the managing agents.

65. The tenants deposits were protected late, by, it was said, eight weeks.

66. Insofar as the Respondent made allegations about the conduct of the tenants other than in respect of the lavatory, these related directly to the complains they had made, which were characterised as unfounded and vexatious.

67. Our conclusions as to the conduct of the parties is as follows.

68. The most serious issue was fire safety. On that, we do not consider that we can conclude that the conduct of the Respondent was seriously at fault. We do not accept that the Fire Safety Assessment is not relevant, given its date. The issues it deals with are not such that the gap between the end of the relevant period and the date of the Assessment could prejudice its conclusions.

69. We accept the Respondent's explanation in respect of the fire doors, and the fire alarm on the second floor. In each case, the allegations of the tenants were, nonetheless, understandable. We note that the fire risk assessment recommended as a priority action that the doors be fitted with intumescent strips, cold smoke seals and self closers, so, although the tenants were mistaken that the doors themselves did not reach fire door standards, there was some justice in their criticism of the fit of the doors. It may have been the case that some signage was originally missing, and was provided late, but the Fire Risk Assessment does not indicate that means of escape were unsatisfactory in general.

70. The other matter of significance is the allegations in respect of the lavatory and bathroom. We reject the Respondent's case that the WC was blocked on several occasions by misuse by the tenants. That the problem stopped after the repair, involving the replacing of a section of pipe, over Christmas 2019 is strongly indicative that this is not the case. The tenants were, in our estimation, responsible adult women, and it is simply not credible that they would behave irresponsibly in relation to the disposal of sanitary products as alleged. While the allegation may raise suspicions of a stereotypical reaction by the Respondent, on balance we do not take that into account in assessing the conduct of the parties.

71. We also accept the evidence of the tenants as to the period it took for the preparation applied to the plinth to dry, and that it was not effectively possible to use the WC during that period. Our view is reinforced by the photographs showing the wet, viscous, rubbery preparation that we were shown. It is not, in our view, acceptable behaviour in a landlord to deprive an HMO of a WC for such a period.

72. The more general complaints as to the condition of the property we broadly regard as either ambiguous in their assessment – old floorboards may well be regarded as attractive rather than defective, for instance – or relatively trivial.

73. On balance, we think it likely that the tenants complaint that Mr Bolt himself was at least short or dismissive of the tenants complaints is justified. Such a conclusion would be congruent with both his approach in his witness statements, and orally before us. However, the conduct complained of is far from the more serious end of the spectrum. We give it some weight, but do not see it as a substantial factor.

74. In his submissions, Mr Hart argued that, even if it was misleading to refer to Drumlin as not a professional landlord, it was a small landlord, and that should be taken into account. In particular, while it could not rely on the failure of the managing agent to alert it to the need for an HMO licence as a reasonable excuse, the failure of the managing agent to do so should be a factor in reducing the RRO.

75. We reject this submission. Drumlin was created as a vehicle to manage and exploit the two flats it owns. It is a limited company whose only function is to do so. It is incorporated in the Isle of Man and is professionally administered from that jurisdiction. Those are choices made by those setting up and subsequently managing the company, choices which no doubt also had resource implications. One of the implications of that choice is that the Respondent should have established appropriate and reliable means to ensure that it was informed of its legal responsibilities as a landlord of properties in London. The situation is a far cry from an individual who operates as a landlord while he or she happens, for other reasons applicable to a natural person, to be located abroad. In such a case, some latitude may be reasonable. That is not this case.

76. 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. No other cases were cited to us.

77. Weighing up all these factors, we conclude that the RROs should be set at 80% of the full amount of rent paid.

Reimbursement of Tribunal fees

78. The Applicant applied for the reimbursement of the application and hearing fees of £300 paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

79. 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.

80. 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.

81. 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.

82. 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:** 8 September 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.