FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AC/HMF/2019/0042**
Property	**:**	**30B Market Place, Falloden Way, London NW11 6JJ**
Applicant	**:**	**Ewa Giedziun**
Respondent	**:**	**Joobet Ltd**
Representative	**:**	**Mr Eric Elbaz, director**
Type of Application	**:**	**Rent Repayment Order**
Tribunal	**:**	**Judge Nicol** **Mr DI Jagger MRICS**
Date and Venue of Hearing	**:**	**29th November 2019;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**13th December 2019**

DECISION

The application for a Rent Repayment Order is dismissed.

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

Reasons

1. The Respondent lets out rooms at the subject property, 30B Market Place, Falloden Way, London NW11 6JJ. In early 2019 there were three tenants: Ms Guilia Giraudo, Ms Sandra Vieira and Ms Nebahat Albayrak.

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2. Ms Giraudo said she was leaving in April. Ms Albayrak had fallen pregnant, was struggling to pay her rent and so also needed to move. In January Mr Elbaz, a director of the Respondent company, served Ms Albayrak with a section 21 notice but did not take further steps because he did not want to leave her homeless. In fact, she did not leave until September 2019 when the local authority finally arranged alternative accommodation.

3. Mr Elbaz owns a bar on the ground floor of the same building as the subject property. The manager of the bar, Mr Oskars Graudins, introduced the Applicant, an acquaintance of a friend of his, to Mr Elbaz. On behalf of the Respondent, Mr Elbaz granted the Applicant a tenancy starting on 16th February 2019.

4. The tenancy did not go well. The Applicant left on 15th June 2019. She has a number of complaints about Mr Elbaz and her fellow tenants. She has applied to this Tribunal for a rent repayment order based on some of those complaints.

5. A rent repayment order may be made when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicant alleged that the Respondent was guilty of all but one of them. However, she had misunderstood the law in relation to some of them:

   a. On 26th April 2019 Mr David Ward, a Technical Officer with the London Borough of Barnet, wrote to the Applicant to say that, following his recent inspection, he had identified some category 1 hazards, including insufficient smoke detection, a non-closing kitchen door, a lack of a guardrail on the stairs, a missing lift door and excess cold on the top floor due to a lack of heating and insulation and single-glazed windows. The Applicant mistakenly assumed that these findings would inevitably result in both an Improvement Notice and a Prohibition Order and so alleged that the Respondent had committed offences under sections 30 and 32 of the Housing Act 2004 of not complying with such a Notice or Order. In fact, Barnet appear to have been satisfied with the steps the Respondent took to address their concerns because, as well as granting a licence (see below), no such Notice or Order were ever served. Therefore, the Respondent could not possibly have committed either offence.

   b. Under section 95 of the Housing Act 2004, it is an offence to manage an unlicensed house. The Applicant had failed to understand that this related to selective licensing schemes for rented properties which were not houses in multiple occupation (HMOs). There was no evidence that the local authority, Barnet, even has a selective licensing scheme, let alone that the Respondent needed to be licensed under it. The Applicant took a while to accept the Tribunal's explanation as to why section 95 did not apply in this case, after which it was mutual ground that the correct section to look at in relation to licensing was section 72 which deals with HMOs (addressed later in this decision).

6. The Applicant had a number of complaints which she said demonstrated that the following offences had been committed:

   a. Under section 6(1) of the Criminal Law Act 1977, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises is guilty of an offence if there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure and the person using or threatening the violence knows that that is the case.

   b. Under section 1(2) of the Protection from Eviction Act 1977, it is an offence to deprive a residential occupier of their occupation of premises unlawfully.

   c. Under section 1(3) and (3A) of the same Act, it is an offence to do acts likely to interfere with the peace or comfort of a residential occupier or persistently withdraw or withhold services reasonably required for the occupation of the premises as a residence with the intention of causing or knowing that it will cause the occupier to give up occupation or refrain from exercising their rights or pursuing any remedies.

7. The Applicant's complaints are each addressed below. The Tribunal's conclusions on each of them turn, at least in part, on who the Tribunal believes. The evidence of the Applicant on the one hand and the Respondent's witnesses on the other could not be reconciled. Where there is a conflict, the Tribunal prefers the evidence of the Respondent's witnesses for a number of reasons:

   a. As described in relation to specific matters below, what evidence the Applicant had and claimed to support her allegations did not support them.

   b. While the Respondent's witnesses, particularly Mr Elbaz, readily conceded matters which weighed against the Respondent, the Applicant demonstrated severe reluctance to do anything similar.

   c. The Respondent's witnesses were consistent with each other.

   d. The demeanour of the Respondent's witnesses supported their credibility, including frustration at the Applicant's evidence, sometimes demonstrated unanimously and unprompted (they all threw up their hands and groaned simultaneously when the Applicant introduced a new allegation at one point).

   e. Mr Elbaz aside, none of the Respondent's witnesses had a vested interest in the outcome of the case.

   f. The Respondent's witnesses made allegations about the Applicant, including filming them without their consent and acting irrationally around them. The Applicant behaved the same way in front of the Tribunal. She filmed the Respondent's witnesses on her phone after the Tribunal had instructed her not to do so. When the Tribunal instructed her to show the Respondent's witnesses some videos on which she wished to rely, she refused to place her laptop near enough for them to be able to see the videos on the basis of an alleged fear that Mr Elbaz would be able to delete the videos by some unexplained manoeuvre so

quick and subtle that she would be unable to prevent it or prove to the Tribunal that it had happened.

8. The Tribunal asked the Applicant to enumerate her complaints and they are addressed in turn in the order she gave them.

9. Firstly, there was a dispute about how the Applicant used the communal bathroom. Ms Vieira said that she frequently found water on the floor of the bathroom after the Applicant had used the shower. She asked the Applicant to clear it up. When the Applicant denied any responsibility, Ms Vieira took it up with Mr Elbaz. The Applicant repeated her denials. On 7th June 2019, Mr Elbaz issued a small claim in the county court (claim no: F2QZ4N47) for the cost, £380, of repairing the bathroom floor and the ceiling below. He obtained a default judgment but it is understood that the Applicant is seeking to get it set aside.

10. The Applicant alleged that the bathroom claims were made falsely with the intention of causing her to give up occupation. The Applicant sought to show a video of a ceiling with no damage but the Tribunal accepts Mr Elbaz's evidence that she was showing the wrong ceiling. She also played a video which she suggested showed no damage or repairs to the bathroom floor but the Tribunal could not see from the video whether she was right or not.

11. The Tribunal has no doubt that Ms Vieira and Mr Elbaz genuinely believe their allegation and that Ms Vieira saw the conditions of which she complained. Mr Elbaz readily conceded that he eventually reached the point where he wanted the Applicant to leave but there is no evidence that he raised this issue in order to bring that about rather than because he thought she had done something wrong and wanted his remedy.

12. The Tribunal is satisfied that none of the relevant offences are engaged by this issue, either alone or as part of some pattern of behaviour. Nothing in this decision is meant to be determinative of the issues now before the county court.

13. Clause 6.2 of the written agreement for the Applicant's tenancy stated,

> The Landlord shall be entitled to have and retain keys for all the doors to the Property but shall not be entitled to use these to enter the Property without the consent of the Tenant (save in an emergency) or as otherwise provided in this Agreement.

14. About a week before the Applicant's tenancy started, Mr Elbaz gave her the key to her room door. The Tribunal accepts Mr Elbaz's evidence that this was the only key because another had been mislaid. In accordance with clause 6.2, Mr Elbaz asked the Applicant for the key in order to copy it. For reasons which are not apparent, the Applicant was extremely reluctant to comply with this request and Mr Elbaz had to ask her repeatedly. He wrote various texts including the following:

- 25/04/2019: Despite numerous verbal and email requests I am still waiting on your copy of passport/id your references and a copy of your door key. Please supply all of these immediately so that accurate records can be held.
- 28/04/2019: Ewa I have for a number of occasions requested copy of your [ID] which you refuse to provide references which you refuse to provide and a copy of the room key which you refuse to provide. I am therefore giving you notice that a locksmith will be removing your lock on Tuesday 30th April 2019. You are welcome to install your own lock but obliged to give me a key in case of emergencies. Regards. Eric
- 29/04/2019: Ewa a reminder that your lock will be removed tomorrow as per my previous texts and emails. I will seek to recover the £96.00 from you. Furthermore I understand that you are intentionally flooding the bathroom on a daily basis and leaving it for other tenants to clear up after you. I should remind you that any damage caused by you will be deducted from your deposit.

15. The Applicant eventually provided the key on 30th April 2019 when she, Mr Elbaz and a builder, Mark, who Mr Elbaz was showing around, all happened to be in the communal area – she videoed this meeting on her laptop. Mr Elbaz got the key copied and passed one to Mr Graudins to give to the Applicant. Mr Graudins says he did this by leaving an envelope for her with the key inside but the Applicant videoed herself later the same day visiting Mr Elbaz in his office asking for the key. Mr Elbaz thought she was playing a game and simply responded that he was entitled to have a key.

16. The Applicant complained to Barnet who wrote to Mr Elbaz on 3rd May 2019 setting out the Applicant's case and pointing out that, if true, the law had been breached. The letter is clearly intended as an advisory warning because it contains the caveat at the beginning that the officer had only heard one side of the story. Even so, Barnet apologised by email on 24th October 2019, accepting that their letter had gone too far in relying on the Applicant's account.

17. The Applicant then decided to change the lock on her door, prompting Mr Elbaz to send the following text on 7th May 2019:

> Ewa I am aware that you have chosen to install your own lock at your own expense to your room this is totally acceptable as long as you supply me a spare key in case of emergencies. I would also remind you that you must make sure that the old mechanism must be replaced before you leave on July 15th. I would also remind you that if a spare key is not supplied immediately I will have no choice but to remove your lock by a locksmith and pass on the charge for the work. I hope this will not be necessary. I'm sure you understand that if there is an emergency it is imperative that there [is] quick and easy access. I look forward to receiving your key failing which your lock will be removed by Friday 10th May 2019.

18. The Applicant alleged that Mr Elbaz's behaviour in relation to the key constituted unlawful harassment within the meaning of the Protection from Harassment Act 1997. The Tribunal is satisfied that she is wrong. The Respondent was at all times entitled under clause 6.2 of the tenancy to retain a key and it follows that he was entitled to change the lock in circumstances where the Applicant refused to allow him one. Mr Elbaz refrained from acting for over two months and then sent a series of reasonably-worded texts giving full notice of his intentions and confirming both parties' rights.

19. The Applicant's video of the meeting on 30th April 2019 when she handed over the key shows Mr Elbaz acting calmly and reasonably. The Applicant claims to have been scared during that meeting but there is nothing in her demeanour in the video to support that. She said she was putting on a brave face but, even if that were the case, the Tribunal would have expected to see something consistent with her account. Her facial expression, her vocal tones and her actions in moving freely about all contradicted her claim. She felt safe enough to withhold £268 from her rent which she claimed was the cost to her of changing the lock, despite the fact that that seems an unusually high amount, particularly in contrast to the £96 Mr Elbaz suggested he would claim for the same job.

20. Further, there is no evidence that Mr Elbaz's actions were motivated by anything other than a desire to manage the property in accordance with the tenancy agreement. His texts make it clear that the changing of the locks was in no way intended to result in the Applicant's exclusion from the property. The Applicant alleged that Mr Elbaz "stole" her key but the evidence is far from sufficient to support this allegation. Again, the Tribunal is satisfied that none of the relevant offences are engaged by this issue.

21. From the start of the tenancy, as reflected in some of the quoted texts above, Mr Elbaz sought the Applicant's ID and references. This is standard practice. In particular, the ID is needed to check the Applicant's immigration status, without which the Respondent could be breaking the law. Again, for reasons which are not apparent, the Applicant would not co-operate. She claims she was afraid of Mr Elbaz and what he might do with the information due to the matters of which she complains. However, even if her complaints were justified, they cannot explain her attitude in the early weeks of the tenancy, before any of her complaints had arisen.

22. In any event, Mr Elbaz sought a way to mitigate the Applicant's attitude. He searched for her name on Yell. The Applicant's name appeared in relation to a tenancy outside London and an allegation of prostitution. Mr Elbaz now accepts that this must have been a different person of the same name. However, at the meeting videoed on 30th April 2019, he mentioned he had found out about the allegation of prostitution and implied that the Applicant was the person involved. The Applicant was understandably upset.

23. However, the Applicant goes further and claims that this was an act of sexual harassment constituting violence and done with the aim of getting her to leave so that the offences under the Criminal Law Act 1977 and the Protection from Eviction Act 1977 were engaged. While what Mr Elbaz did in this instance was wrong and upsetting, it is not violence and there is no evidence that he acted to try to get her to leave. Quite the opposite, he was trying to get her to co-operate with his reasonable requests for ID, references and a key. The Applicant has issued her own claim in the county court (claim no: F02CL078) which includes this allegation. The Tribunal makes no comment on the prospects of success for such a claim but is satisfied that, again, the relevant offences are not engaged by this issue.

24. On 1st May 2019 Mr Elbaz sent an email seeking references from Birkbeck University where the Applicant was doing the first year of her law studies. Ms Julia de Cruz, a student adviser, responded that this was not possible without the Applicant's written consent and, later the same day, the Applicant emailed to say she had never given her consent.

25. The Applicant claims that Mr Elbaz was stalking her but, again, she is making too much out of this. Mr Elbaz arguably overstepped the mark in trying to get round the Applicant's lack of co-operation on producing references but, again, the Tribunal is satisfied that this issue does not engage any of the relevant offences.

26. Ms Vieira is a woman of colour from Portugal. She alleges that the Applicant has been racist towards her, saying that she should go back to her own country, that there are no black Portuguese people and that she was a monkey. She reported this to the police but they were reluctant to get involved, ostensibly because this happened indoors. She also reported it to Mr Elbaz. She was prepared to carry on, with both her and the Applicant continuing to be tenants, so long as the racism did not continue. Therefore, Mr Elbaz tried to arrange a meeting with all 3 of them to try to get some mutually acceptable way forward.

27. Unfortunately, the Applicant again refused to co-operate, saying she would not be in the same room as Ms Vieira. Mr Elbaz asked her about Ms Vieira's allegations. Even if the allegations were true, he expected her to show upset and to deny them. Instead, according to Mr Elbaz, she casually admitted that she thought of Ms Vieira as a monkey.

28. Mr Graudins has also reported racist behaviour by the Applicant. He was walking with the Applicant to her flat on one occasion when she referred to Ms Vieira as a monkey and said Mr Graudins "should not be working for that Jew, they are all the same." Mr Elbaz is Jewish and had previously told the Applicant that he was unavailable on a particular Saturday because it was his Sabbath. Mr Graudins also said that a black female employee at the bar, Ms Amy Wright, had told him about an incident when the Applicant was filming her without her

consent and, when she objected, the Applicant replied, “shut up you monkey”.

29. Another witness, Ms Michaela Novakova, a former tenant at the property, stated in her witness statement that she was talking to Ms Vieira in the communal lounge, in or about April 2019, when the Applicant said that Ms Vieira should eat some bananas and go back to her country.

30. The Applicant has responded that she has had a very cosmopolitan life and upbringing, including visiting Portugal, and it is just not credible that she would behave in this way. The Tribunal accepts that such behaviour is irrational but the Applicant has already exhibited irrational behaviour in a number of ways. As previously stated, the Tribunal finds the Respondent’s witnesses to be credible and supportive of each other’s accounts.

31. In the circumstances, the Tribunal accepts that the allegations of racism and anti-semitism are made out. The Applicant has claimed that the allegations have been deliberately fabricated in order to try to get her to leave the property. The Tribunal is satisfied they were not fabricated and they have been raised because they are true.

32. The tenancy was provided with a wi-fi connection. When it dropped on one occasion, the Applicant claimed that Mr Elbaz had arranged it deliberately. When Mr Elbaz checked, none of the other tenants had the same complaint. It then dropped again. In her video on 30th April 2019, the Applicant can be seen asking to have the wi-fi connection pointed out to her on her laptop but when Mr Elbaz does so, she simply does not respond other than to ask her question again.

33. The Tribunal accepts that the Applicant did not have an internet connection through the wi-fi service provided by the Respondent on one or more occasions. However, there is no evidence that this was anything more than the occasional problem most broadband users experience from time to time. There is certainly no evidence that Mr Elbaz arranged it deliberately. The Applicant claimed that he had deliberately stopped paying the broadband connection bill but Mr Elbaz provided all the bills for the relevant period showing that it had always been paid as required.

34. The Applicant complained that, during the meeting on 30th April 2019, Mr Elbaz had turned her phone off. Her video shows him picking up her phone while she is temporarily out of the room, there is then a jump in the video before he puts it down again. Mr Elbaz denies having turned it off. If true, his actions would have been petty and entirely pointless – the Applicant does not claim that her phone being off at that time had any particular significance. There is just no reason why he would have turned off her phone and the Tribunal is not satisfied the allegation is correct, let alone that it supported an allegation of a criminal offence.

35. At the commencement of the tenancy, the Applicant paid a deposit in the normal way. Mr Elbaz is fully aware of the tenancy deposit protection requirements and normally uses one of the insurance schemes. However, on this occasion, he says that the Applicant asked him to hold off on protecting it because she was not sure if she would be able to secure alternative accommodation elsewhere. When, instead, on either 15th or 25th April 2019, she sent a letter before action seeking a penalty sum for failure to protect her deposit, he sent it to the Tenancy Deposit Scheme. At the end of the tenancy, Mr Elbaz invoked the dispute resolution scheme, asking for the deposit to be returned to him in lieu of the unpaid rent for the last month of the Applicant's tenancy. The Applicant did not respond to requests to participate in the dispute resolution and so the deposit was returned to Mr Elbaz.

36. The Applicant claims that the Respondent breached the tenancy deposit protection requirements and that this was part of Mr Elbaz's actions calculated to prompt her to leave. The Tribunal is satisfied that Mr Elbaz's account is entirely correct and, again, none of the relevant criminal offences are engaged by this issue.

37. The Applicant also complained that Ms Novakova was mentioned on the TDS deposit certificate as a lead or joint tenant. Apparently, TDS required someone to be a lead tenant and Mr Elbaz had nominated Ms Novakova who occasionally helped him locate tenants for the property. When pressed by the Tribunal, the Applicant was unable to say how this matter was relevant to anything in this case.

38. The Tribunal also accepts Mr Elbaz's evidence that, contrary to the Applicant's allegations, she was provided with the Energy Performance Certificate, a gas safety certificate and the relevant tenancy guide before the commencement of the tenancy.

39. The Particulars of Claim in the Applicant's county court claim refer to allegations of nuisance against other tenants but, as the Tribunal understands it, they are not relied on in the current application.

40. When the Applicant became a tenant at the property, there were four tenants in occupation. Although Mr Elbaz had expected Ms Giraudo, and Ms Albayrak to be leaving shortly after, this remained the case throughout the tenancy. Mr Elbaz conceded that this made it a licensable HMO throughout the Applicant's tenancy.

41. However, Mr Elbaz did not know about the licensing requirements until Mr Ward, the aforementioned Technical Officer from the London Borough of Barnet, informed him after his inspection. He applied for a licence shortly thereafter, around the end of April, and it was eventually granted on 1st August 2019.

42. On these facts, the elements of the offence specified in section 72(1) of the Housing Act 2004 are satisfied, namely that a person commits an offence if he is a person having control of or managing an HMO which

is required to be licensed but is not so licensed. However, there are two defences:

- Under section 72(4)(b), it is a defence that an application for a licence had been duly made. This means that the Respondent had a defence from around the end of April 2019. The Tribunal must be satisfied beyond a reasonable doubt that an offence has been committed and, on these facts, the Tribunal is not satisfied that the Respondent committed any offence from that time, leaving a period of 2½ months when an offence could have been committed.
- Under section 72(5), it is a defence that the Respondent had a reasonable excuse. Mr Elbaz submitted that the circumstances in which the property became to be an HMO for 2½ months, in particular with the difficulties of finding alternative accommodation for Ms Albayrak, constitute just such a reasonable excuse. This exercised the Tribunal but we are satisfied that this was just about enough to constitute a reasonable excuse so that the defence operates and an offence was not committed.

43. Even if the Tribunal is wrong and the Respondent did commit an offence under section 72 for the period of 2½ months, the Tribunal has a discretion whether or not to make a rent repayment order. The Tribunal is satisfied that this is a rare case in which it is appropriate to exercise that discretion not to make a rent repayment order. The Applicant has brought an application in which virtually all her numerous allegations have been rejected. Her behaviour has bordered, if not crossed the line of, being unreasonable and vexatious. She did not pay her last month's rent and withheld some of her rent for her unnecessary exercise in changing the locks.

44. For the same reasons, even if the discretion should be exercised in favour of making a rent repayment order, the Tribunal would set it at zero, taking into account in particular the Applicant's conduct in accordance with section 44(4) of the Housing and Planning Act 2016 and the fact that she did not pay her full rent.

45. For these reasons, the application is dismissed.

Name: NK Nicol **Date:** 13th December 2019

Appendix of relevant legislation

Criminal Law Act 1977

Section 6 Violence for securing entry

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

(1A) Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

(3) …

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(6) …

(7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.

Protection from Eviction Act 1977

Section 1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Housing Act 2004

Section 30 Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice–

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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

(8) 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.

Section 32 Offence of failing to comply with prohibition order etc.

(1) A person commits an offence if, knowing that a prohibition order has become operative in relation to any specified premises, he–

(a) uses the premises in contravention of the order, or

(b) permits the premises to be so used.

(2) A person who commits an offence under subsection (1) is liable on summary conviction–

(a) to a fine not exceeding level 5 on the standard scale, and

(b) to a further fine not exceeding £20 for every day or part of a day on which he so uses the premises, or permits them to be so used, after conviction

(3) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for using the premises, or (as the case may be) permitting them to be used, in contravention of the order.

<u>Section 72</u> 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).

<u>Section 95</u> 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).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

7	This Act	section 21	breach of banning order

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

Section 43 Making of rent repayment order

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

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

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

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

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

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

Section 44 Amount of order: tenants

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

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

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

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

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

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

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

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

(b) the financial circumstances of the landlord, and

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