FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMK/2019/0012**
Property	**:**	**29 Leighton Road, London NW5 2QG**
Applicant	**:**	**Samy Hamdane, Paige Erkiert, Freya James, Hayden Lewis and Linnea Personen**
Representative	**:**	**Samy Hamdane**
Respondent	**:**	**ORL Holdings Ltd**
Representative	**:**	**Archie Maddan (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 Robert Latham** **Anthony Harris LLM FRICS FCIArb**
Date and Venue of Hearing	**:**	**19 July 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**25 July 2019**

DECISION

Decision of the Tribunal

1. The Tribunal makes a rent repayment orders ('RRO') in the sum of £28,994 in favour of Samy Hamdane, Freya James, Hayden Lewis and Linnea Personen. The said sum is to be paid by 23 August 2019.

2. The Tribunal determines that the Respondent landlords shall also pay the Applicants £300 by 23 August 2019 in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 ("the Act") for a RRO in respect of 29 Leighton Road NW5 2QG ("the property"). The Applicants appointed Mr Hamdane to act as their representative. The Applicants were tenants of 29 Leighton Road, London NW5 2QG between 2 September 2017 and 1 September 2018. They paid a monthly rent of £3,878.33. It is common ground that the Respondent applied for a HMO license on 20 July 2018. The Applicants therefore apply for a RRO in the sum of £40,722, namely the total rent paid between the period 2 September 2017 and 20 July 2018.

2. On 12 February 2019, the Tribunal gave Directions. The purpose of such Directions is to identify the relevant issues that the Tribunal will need to consider so that the Tribunal can determine the application fairly and in a proportionate manner. Pursuant to these Directions:

   (i) On 12 March, the Applicants filed their Bundle of Documents. Their Bundle is commendably concise. They raise five particular instances of poor management which they contend is relevant to the conduct of the landlord (at p.40 of the Bundle).

   (ii) On 23 April, the Respondent filed their Bundle of Documents. This included Written Submissions (at Tab 5) and a witness statement from Mr Vasilios Demosthenous, a Director of the Respondent Company (at Tab 6). This extends to 124 pages.

   (iii) On 25 April, the Applicants filed a Reply (at Tab 7). Mr Maddan argued that the Applicants were obliged to address every factual assertion made by Mr Demosthenous which they disputed. We disagree. An applicant is given a discretion to file a Reply, and need only do in so far as they consider it appropriate to respond to any issues raised by a respondent.

3. Thereafter, without seeking any permission from the Tribunal, the parties sought to add additional stages:

   (i) on 7 June, The Respondent filed a Reply to the Applicant's Reply (at Tab 9);

   (ii) On 8 June, the Applicants Responded to this (at Tab 11). This included new allegations relating to the conduct of the Respondent in respect of other properties that it lets.

(iii) On 5 April, Mr Demosthenous filed a second witness statement (At Tab 12). This extends to 71 pages (with exhibits). This included one important exhibit (at p.232). This is a letter from the Respondent's Accountant which seeks to explain how the Respondent compute the mortgage interest of £2,074.75 per month which they seek to set-off against any RRO. Mr Demosthenous had initially argued for a deduction of £1,900 per month.

4. The Tribunal deplores the unnecessary expense that has been occasioned by these additional steps:

(i) The Applicants should have identified all relevant matters upon which they intended to rely in respect of the conduct of the landlord in their initial Bundle of Documents. The Tribunal is not prepared to consider the additional allegations which were only raised on 8 June. In any event, in considering the conduct of the landlord (and the tenants), the Tribunal is primarily concerned with conduct relating to the tenancy in issue.

(ii) During the course of the hearing, the landlord sought to argue that an additional deduction of £232.70 should be made in respect of the 5% management fee charged by Ideal Place. Again, the Tribunal is satisfied that the Respondent should have identified any deductions for which they were minded to contend in their initial Bundle of Documents. The Directions specifically refer to "evidence of any outgoings, such as utility bills, paid by the landlord for the let property".

(iii) The Tribunal is willing to permit the Respondent to rely upon the letter from their accountant. This is highly relevant to the issue of what deduction, if any, the Tribunal should make in respect of mortgage interest. Mr Hamdane did not object to this.

The Hearing

5. Mr Samy Hamdane appeared on behalf of the Applicants. All the Applicants are students at the UCL. Mr Hamdane is studying economics and politics. The other applicants are studying psychology.

6. Mr Archie Maddan (Counsel) appeared for the Respondent. He was accompanied by Ms Tamanna Begum from his instructing solicitor, Anthony Gold. He adduced evidence from Mr Vasilios Demosthenous, a Director of the Respondent Company. Mr Demosthenous was hard of hearing. It was necessary for the Tribunal to repeat a number of questions. However, even making due allowance for this, the Tribunal did not find him to be an entirely satisfactory witness.

7. At the beginning of the hearing, both parties agreed a number of the issues which we are required to determine. The significant issues which remained in dispute were the deductions which we should make from any RRO

having regard to (i) the conduct of the landlord; and (ii) the mortgage interest payments paid by the Respondent. Mr Maddan did not ask us to consider any authorities, albeit that this latter issue is not without difficulty. Mr Maddan accepted there are no significant issues relating to the conduct of the tenants to which we should have regard.

8. The law in this area is complex. We annex the relevant statutory provisions to this decision.

The Background

9. Mr Demosthenous stated that the Respondent owns some 50 properties (both houses and flats) in North London. There are a number of linked companies. On 27 January 2000, the property at 29 Leighton Road had been acquired for £220,000. It is a terraced property in Kentish Town. It had been dilapidated and was refurbished at considerable expense. Since that date, it had been let. In his statement, Mr Demosthenous stated that the Respondent Company had been incorporated in December 2015. We therefore assume that the property was initially acquired by a linked company.

10. Mr Hamdane described how in July 2017, he and his four fellow students at UCL were looking for a flat share for the next academic year. The property was advertised on-line through "flatshare" for five people. It was to be let furnished. When he inspected the property, there were five rooms with beds. There was a kitchen/dining room, a bathroom and a toilet/shower on the ground floor. It is apparent that the two ground floor living rooms were being used as bedrooms. The Applicants have provided a plan of the property with a layout over three floors (at p.43), backed up by a series of photographs (at p.44-46). This bears little resemblance to the plan provided by the Respondent of the property which suggests that the accommodation is on only two floors (at p.98). We are satisfied that the tenants' plan is the more accurate.

11. Each of the five applicants was required to pay an administration fee but that the £120 paid by Ms Erkiert was refunded. The letting was arranged by Ideal Place Limited ("Ideal Place") who share a small office with the Respondent Company at 1B Murray Street, NW1 9RE.

12. Mr Demosthenous states that the Respondent Company was unaware that Ms Erekiet had moved into the property. The Respondent only became aware that there was a fifth person after a conversation with Ideal Place on 5 April 2019. He added that the Respondent had dispensed with the services of Ideal Property in November 2017 because he was dissatisfied with the service that they were providing.

13. The Tribunal cannot accept this evidence and prefer the evidence of Mr Hamdane. We are satisfied that there were beds in the five living rooms. It was advertised for five people. The five tenants had been seeking a flat share. The e-mail from Philippe Lewinson, dated 27 July 2017, sent to Ms

James (at p.119) refers to the payment of five administration fees. She used an e-mail address "philippe@ideal-place.co.uk". There is also an e-mail dated 18 September 2017 (at p.203) which is addressed "Dear Paige, Linnea, Hayden, Samy and Freya" and sent to all five applicants by "ORL" from the e-mail address "orl1@btconnect.com". This enclosed the tenancy agreement, a tenants handbook, a Rent Deposit Protection certificate and an Information Sheet about the Deposit Scheme.

14. Mr Demosthenous stated that this e-mail was an error which had been sent by an inexperienced member of staff working for Ideal Property who had wrongly used the Respondent's e-mail address. We do not accept this explanation. We are satisfied that both landlord and its agent were aware that there were to be five occupants.

15. A copy of the tenancy agreement is at p.101-105. It is dated 2 September 2017 for a term of 12 months commencing on 2 September 2017. The rent is £3,878.33 per month. Only Samy Hamdane, Freya James, Hayden Lewis and Linnea Personen are named as tenants. Mr Hamdane stated that the applicants were told that there could only be four tenants "for legal reasons". The rent was paid by Mr Lewis on behalf of the tenants. Bank statements are provided at p.54-66.

16. Mr Maddan was unable to provide any explanation as to why only four of the five applicants were named as tenants. He pointed out that the e-mail of 27 July 2017 (at p.119) made it clear that whilst administration charges were required from the five applicants, references would only be taken up in respect of four tenants. At the time, this was not a problem for the applicants. They were all friends and they recognised their joint and several liability to pay the rent.

17. With the benefit of hindsight, Mr Hamdane suggests that this was a device to suggest that there were only four, rather than five occupants. At this time, a three storey property with five occupants would have fallen within a "prescribed description" of a HMO which required to be registered (see section 55(2)(a) of the Housing Act 2004 and Article 3 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006). In the absence of any other explanation, this is the likely explanation.

18. Mr Hamdane had a number of complaints about the management of the property. The tenants were told that an Inventory was to be prepared prior to them taking up occupation. They were also told that the property would be professionally cleaned and the garden would be mown and tidied. No Inventory was ever prepared. The property was only cleaned and the garden mown some two weeks after they had taken up occupation. When they moved in, there were a number of belongings, including a spare mattress, which had been left by the previous tenants. These were not removed despite numerous requests. There were no blinds in two of the bedrooms as a result of which the tenants needed to use blankets as makeshift curtains. There was a problem with the lock to the front door as a result of which it banged. There was also a leak. The tenants complained

about these problems, but they were only resolved when the neighbours also complained. In October 2017, they had no heating and hot water for seven days. Operatives were initially unable to resolve the problem and a new boiler was required. Mr Hamdane also complained that there were rats in the kitchen. When they complained, they were told to put down bait. When the fixed term expired, they did not wish to renew the tenancy.

19. We accept that the initial management of the property was unsatisfactory. This seems to have accepted by the Respondent who dispensed with the services of Ideal Place in November 2017. Mr Maddan suggested that the tenants were not prejudiced by the absence of an Inventory. We disagree. A substantial deposit of £5,370 was required. An Inventory is an important safeguard if there is any dispute as to what deduction should be made from the deposit at the end of the tenancy. Mr Maddan also suggested that the delay of 7 days in repairing the boiler, would not establish liability for actionable disrepair. Mr Hamdane's evidence in respect of the rats was not compelling; there was no e-mail trail.

20. The Tribunal accepts that the tenants faced some real problems. Whilst these were not insignificant, these do not come close to the worst RRO cases which are heard by this Tribunal.

21. It is common ground that the Respondent applied for a HMO licence on 20 July 2018. From this date, the Respondent had a statutory defence to the offence of controlling or managing an unlicensed HMO (see section 55(4) Housing Act 2004). Mr Demosthenous stated that Camden licenced the property for five occupants in May 2019.

22. Mr Demosthenous did not provide a satisfactory explanation for the Respondent's failure to obtain a HMO licence before letting the property to the tenants. In his statement, he states that the Respondent applied for a licence "as quickly as possible" after it learnt that a licence was required. The Tribunal notes that the letter upon which Mr Demosthenous seeks to rely (at p.192) is dated "2nd March 2017"

Our Determination

23. Mr Maddan took the preliminary point that Ms Erkiert was not named as a tenant on the tenancy agreement. He suggested that she was an unauthorised occupant. We do not accept this. We find that the property was advertised for five people, that the Respondent knew that Ms Erkiert would be occupying the property and that she was a lawful occupant. However, she was not a joint tenant specified in the tenancy agreement. The four other applicants were jointly and severally liable for the full rent which was paid without the assistance of any state benefit. We therefore make the RRO in favour of the four tenants. It may be that they will need to account to Ms Erkiert for part of any sum that they recover.

24. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) On 8 December 2015, Camden introduced an additional licencing scheme for HMOs. Under this scheme all HMOs in the borough are required to be licenced.

(ii) 29 Leighton Road is an HMO falling within the definition falling within the "standard test" as defined by section 254(ii) of the 2004 Act. In particular:

(a) it consists of five units of living accommodation not consisting of self-contained flats;

(b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable in respect of the living accommodation; and

(f) the households who occupy the living accommodation share the kitchen, a bathroom and a toilet.

(iii) The Respondent failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1). On 2 September 2017, the property was let to four tenants (and five occupants) without a licence. Camden received an application for a licence on 20 July 2018 when the offence ceased.

(iv) The offence was committed over the period of 2 September 2017 to 19 July 2018.

(v) The offence was committed in the period of 12 months ending on 30 January 2019, namely the date on which the application was made.

25. The 2016 Act gives the Tribunal, a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. We are satisfied that none of the Applicants were in receipt of any state benefits and that they paid the rent from their own resources.

26. During the period 2 September 2017, and 19 July 2018, the Applicants paid rent of £41,079.42, namely ten months and 18 days. The RRO only relates to the rent paid during the period that the offence was committed.

27. Section 44 of the Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord

(ii) The conduct of the tenants. Mr Maddan conceded that there were no significant matters relating to the conduct of the tenants to which we should have regard.

(iii) The financial circumstances of the landlord.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.

28. In determining the amount of any RRO, we have had regard to the guidance given by the George Bartlett QC, the President of the Upper Tribunal ("UT") in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the Housing Act 2004 where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than a non-professional landlord.

29. The UT went on to consider the RRO that was appropriate in that case. It considered that it was not appropriate to impose a RRO which exceeded the profit made by the landlord during the relevant period. The UT considered it appropriate to make deductions for the costs of insurance, gas, electricity, water, council tax and cleaning. It did not consider it appropriate to make a reduction in respect of mortgage costs. It appeared that whilst the landlord had bought the house in 1996, the costs of the mortgage relate to a mortgage that had been taken out relatively recently.

30. We first consider the profit made by the Respondent. Mr Demosthenous has produced a schedule of outgoings (at p.201). He asks us to make deductions for insurance and four items of repair. The annual cost of

insurance is £451.70 which we reduce to £398.67 for the relevant period of 10 months and 18 days. The four repairs which total £2,022.22, were all incurred during the relevant period. We therefore make a deduction of £2,420.89.

31. We must then consider the issue of mortgage interest. In his witness statement, Mr Demosthenous initially contended for a figure of £1,900 per month. However, having taken advice from his accountant, he now seeks to increase this to £24,897.00 per annum (or £2,074.50 per month). The relevant deduction over the period of 10 months and 18 days would be £21,974.10. This would make a substantial difference to any RRO that we might make.

32. The Respondent purchased the property on 27 January 2000 for £220,000. Mr Demosthenous stated that it was in a dilapidated condition and that it was refurbished at considerable expense. The Respondent's Bank now value the property at £1.114m, albeit that Mr Demosthenous suggested a lower valuation of £1m. The Tribunal has heard no evidence of the loan, if any, taken to fund the initial acquisition and refurbishment of the property.

33. The Respondent has taken out an interest only loan charged against 15 of its 50 properties. The loan represents 60% of the bank's valuation of this portfolio. We have not been told the total value of this portfolio of 15 properties. Mr Demosthenous suggested that the total loan was some £6.5 to £7m.

34. There are two issues for this Tribunal to determine:

(i) As a matter of general practice, should we take into account mortgage interest in determining the profit made by the landlord?

(ii) If so, should we take it into account in this case?

35. We note that the Act provides that the maximum amount that a landlord may be required to repay is the rent paid during the relevant period, less any state benefits. We are required to take into account "the financial circumstances of the landlord". The suggestion that it would not be appropriate to impose a RRO that exceeds the landlord's profit in the relevant period, is rather guidance provided by the UT. The UT gives such guidance as part of its role to promote consistent practice by First-tier Tribunals (see Carnwath LJ in *Earl of Cadogan v Sportelli* [2007] EWCA Civ 1042; [2008] 1 WLR 2142).

36. As we indicated to the parties, we are an expert tribunal. In our experience, Buy to Let landlords acquire properties for two reasons: (i) capital appreciation and (ii) income from letting the property. The primary

return is through the capital appreciation. Properties in Camden have increased in value by some four-fold since 1990.

37. The extent to which a landlord decides to fund the purchase of a Buy to Let property will depend upon the individual circumstances of the landlord. The amount of any loan interest does not relate to the cost of letting the property. The primary purpose in taking out a mortgage is to fund an investment which will yield a capital profit.

38. We therefore conclude that as a general matter of practice, it would not be appropriate to make a deduction for mortgage interest. We highlight three factors:

(i) A person who acquired a property with the benefit or a mortgage would be required to make the relevant interest payments regardless or whether or not the property is let.

(ii) Should the size of a RRO depend upon whether a landlord has taken out a loan of £1m, £0.5m or owns 100% of the equity? We suggest that it should not.

(iii) It would be invidious for a tribunal to seek to apportion the mortgage interest paid between to the capital and income elements of a landlord's investment. We are satisfied that mortgage interest rather relates to the acquisition of a capital appreciating asset.

39. We accept that there may be a case where it would be appropriate to have regard to a mortgage liability. Section 44(4)(b) requires a tribunal to have regard to the "financial circumstances" of the landlord. Where a landlord raises an issue on impecuniosity, it would be appropriate for the tribunal to consider any mortgage liability in assessing their personal financial circumstances. This would normally arise in the case of an individual. No such argument of impecuniosity arises in the current case.

40. Even if we are wrong on the matter of general practice, we are satisfied that it would be inappropriate to make any deduction for mortgage interest on the facts of this case. The interest claimed does not relate either to the purchase of the property or its refurbishment. We are rather dealing with a residential investment company which owns a large portfolio of properties. It has made a commercial decision to operate with a high level of gearing, taking out a substantial loan representing 60% of the banks' valuation of this portfolio of 15 properties. It has done so to generate additional resources to enable it to increase its investment portfolio of rented properties.

41. Taking all relevant matters into account, we are satisfied that the RRO should be made in respect of 75% of the profit. We have computed this profit to be the rental of £41,079.42 received during the relevant period

42. less the outgoings of £2,420.89, namely £38,658.53. 75% of this figure is £28,994.

43. In adopting a figure of 75%, we have regard to the fact that we are dealing with a residential property company with a significant portfolio of rented properties. We are satisfied that the Respondent knew, or ought to have known, that a licence was required. Camden introduced its additional licencing scheme on 8 December 2015, some 21 months before this letting. This property has been let throughout this period. The Respondent has provided no explanation for the "legal reasons" why only four of the five Applicants were put on the tenancy agreement, albeit that this was a property with five bedrooms. The explanation rather seems to be that suggested by Mr Hamdane, namely that this was a device to conceal the reality of the letting. A deliberate flouting of the requirement to register merits a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is to be dealt with more harshly than a non-professional landlord.

44. We have also regard to the defects in management identified by the Applicants. However, this is a smaller factor in our decision to adopt a percentage towards the higher end of the range.

45. The Tribunal furthers order that the Respondent should refund the tribunal fees of £300 paid by the Applicant pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Robert Latham
25 July 2019

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of Relevant Legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

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)).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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
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.

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.

Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006/371

3.— Description of HMOs prescribed by the Secretary of State

(1) An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act where it satisfies the conditions described in paragraph (2).
(2) The conditions referred to in paragraph (1) are that—

(a) the HMO or any part of it comprises three storeys or more;
(b) it is occupied by five or more persons; and
(c) it is occupied by persons living in two or more single households.

(3) The following storeys shall be taken into account when calculating whether the HMO or any part of it comprises three storeys or more—

(a) any basement if—
(i) it is used wholly or partly as living accommodation;
(ii) it has been constructed, converted or adapted for use wholly or partly as living accommodation;
(iii) it is being used in connection with, and as an integral part of, the HMO; or
(iv) it is the only or principal entry into the HMO from the street.
(b) any attic if—

(i) it is used wholly or partly as living accommodation;
(ii) it has been constructed, converted or adapted for use wholly or partly as living accommodation, or
(iii) it is being used in connection with, and as an integral part of, the HMO;
(c) where the living accommodation is situated in a part of a building above business premises, each storey comprising the business premises;
(d) where the living accommodation is situated in a part of a building below business premises, each storey comprising the business premises;

(e) any mezzanine floor not used solely as a means of access between two adjoining floors if—

(i) it is used wholly or mainly as living accommodation; or

(ii) it is being used in connection with, and as an integral part of, the HMO; and

(f) any other storey that is used wholly or partly as living accommodation or in connection with, and as an integral part of, the HMO.