FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMF/2020/0230**
HMCTS code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flat 33 Hillside Court 409 Finchley Road London NW3 6HQ**
Applicant	**:**	**Ms. S.A. Song**
Representative	**:**	**Mr. K. Sharma of counsel instructed by Legal Road Ltd.**
Respondents	**:**	**(1) Mr. Daniel Rothberg** **(2) Mr. Bruce Rothberg** **(3) Mr. David Reuben Rothberg**
Representative	**:**	**Not Represented**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Tribunal Judge S.J. Walker** **Tribunal Member A. Lewicki FRICS**.
Date and Venue of Hearing	**:**	**2 June 2021 - video hearing**
Date of Decision	**:**	**13 July 2021**

DECISION

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(1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondents to pay the Applicant the sum of £11,268.

(2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £300 paid by the Applicant in bringing this application is granted. Payment is to be made within 28 days.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

The Application

1. The Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") for a period of 12 months beginning on 13 October 2019.

2. The application was made on 23 October 2020, so is in time, and alleges that the Respondents have committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") – having control or management of an unlicensed House in Multiple Occupation ("HMO").

3. Directions were issued on 15 February 2021. Among other things these required the parties to prepare bundles of documents.

4. In response to those directions the Applicant produced a bundle of documents consisting of 101 numbered pages. The Respondents produced a bundle of 72 numbered pages. The Applicant then provided a further bundle of 52 numbered pages in reply. Page references in what follows are to the numbers which appear at the foot of each bundle. References to the Applicant's bundle and supplementary bundle are prefixed A and AS respectively, and references to the Respondents' bundle are prefixed R unless otherwise stated.

The Hearing

5. The parties attended the hearing. The Applicant was represented by Mr. Sharma of counsel. The Respondents were not represented. The Applicant adopted her witness statement (which is at pages A23 to A27) and was then asked questions in cross-examination by the Third Respondent. During the course of the hearing it became clear that the Applicant's partner was present in the room with her, although he was not on screen, and that he had had some conversation with her during the course of her giving evidence. Although this was unfortunate and it would have been better had he made his presence known from the start, the Tribunal was satisfied that this irregularity made no material difference to the substance of the evidence given and to the conclusions the Tribunal reached.

6. The Third Respondent also adopted his own witness statement (which is at pages R6 to R10) and was asked questions in cross examination by Mr. Sharma.

The Law

7. The relevant legal provisions are set out in the Appendix to this decision.

8. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the 2004 Act if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

9. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description or, if it is in an area for the time being designated by a local housing under section 56 of the 2004 Act as subject to additional licensing, if it falls within any description of HMO specified in the designation. This case is concerned with an alleged failure to obtain an additional licence.

10. In this case the property is within the London Borough of Camden ("LBC") It was accepted by the Respondents that from 8 December 2015 LBC had in place a designation under section 56 of the 2004 Act under which a property occupied by 3 or more people forming 2 or more households requires an HMO licence, including those in purpose-built blocks. See also page A78.

11. In order to require a licence a property must also still be an HMO, which means that it must meet one of the tests set out in section 254 of the 2004 Act. These include the standard test under section 254(2).

12. A building meets the standard test if it;

> "*(a) 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 …;*
> *(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;*
> *(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.*"

13. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

14. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it.

15. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed. Such an order is to be made in favour of a tenant. By section 56 of the Act the term "letting" is defined as to include the grant of a licence and the term "tenancy" is defined so as to include a licence. It follows, therefore, that an order may be made in favour of a licensee as well as in favour of a tenant, and that the term "landlord" must be similarly construed.

16. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.

17. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

18. The Tribunal bore in mind that in this case the property is owned by three Respondents jointly and that the application is made against each of them jointly. The role of the Tribunal is to consider the facts as they apply to the Respondents jointly. Although much of the Respondents' case centred on the actions and circumstances of the Third Respondent, it is the actions and circumstances of the Respondents jointly which the Tribunal must take into account.

Findings

1. Has an Offence Been Committed

19. The Tribunal was satisfied that the property is owned by the Respondents. This was accepted by them and evidence of title is at pages A32 to A35. The property is described by the Respondents as one of the largest out of 61 flats in an upmarket 1930s character mansion block (see page R6 at para 1)

20. At the outset the Respondents made it clear that they accepted that an offence under section 72(1) of the 2004 Act had been committed. They accepted that throughout the period in question the property was an HMO which was required to be licensed and was not, and that the offence had been committed by all three of them.

21. Although not expressly raised by the Respondents the Tribunal nevertheless considered whether or not a defence of reasonable excuse arose. The Tribunal was satisfied that none did.

22. In his witness statement the Third Respondent explained that he took over sole management of the property in February 2019 and that in March 2019 he began to look into LBC's HMO requirements (see para 4 at page R6). This was 5 months before the Applicant moved into the property. His statement then continues by stating that in May he started on the work needed for an HMO. This shows that he was aware that the property needed an HMO licence, or at the very least that he was aware that such a licence may be needed, and that he was taking steps to obtain one. He then says that in June he felt unwell and decided to take a break and in July he decided that his health should be prioritised and that he should take a break. He also states at para 16 (page R9) that his health had severely limited him during the whole of the time the Applicant was in occupation. Nevertheless, the evidence shows that it was he who entered into the agreement with the Applicant and who had ongoing dealings with the Applicant.

23. In the view of the Tribunal the evidence shows that the Respondents were aware well before they let the property to the Applicant that an HMO licence was needed, or, at the very least, that one may be needed. This is because they had started the process of preparing themselves to apply for one. The Tribunal considers it inherently unlikely that the Respondents would have started the process of making their property ready to be licensed if they had no idea that a licence may be needed.

24. Although the Tribunal accepts that the Third Respondent suffered from ill health this, at best, explains why it took a long time for him personally to progress the licence application which, according to him, was finally made on 6 November 2020. It does not amount to an excuse for renting the property to the Applicant when he knew that there was no licence in place and that one was, or at least may be, needed. At best his actions were reckless, at worst a deliberate illegal act.

25. Also, and in any event, the Third Respondent's ill-health is no excuse for the other Respondents either not taking steps themselves or not arranging for others to do so to ensure that the property was licensed before it was occupied. Whilst the Tribunal accepts that the First Respondent was out of the country, no adequate explanation has been given for the Second Respondent not ensuring that the property was licensed sooner. Whilst reliance is also placed on the restrictions arising from the Covid-19 pandemic, the Tribunal notes that the Applicant had been in occupation for six months by the time that commenced in this country.

26. Taking all the submissions on behalf of the Respondent into account, the Tribunal was satisfied that no defence of reasonable excuse arose in

this case. The Tribunal was, therefore, satisfied so that it was sure that an offence had been committed.

2. Is There Jurisdiction to Make an Order

27. Having concluded that an offence had been committed the Tribunal next considered whether it had jurisdiction to make an order under the Act and, if so, what the maximum amount of that order is.

28. The Applicant entered into an agreement to occupy a bedroom in the property for a fixed term from 7 August 2019 until 7 February 2020 (pages A28 to A30). Although the only person named as the householder is the Third Respondent, the Respondents accepted that he was acting on behalf of all of them.

29. During the course of the hearing the Respondents raised issues about the nature of the agreement under which the Applicant was occupying the property. It was argued that she was not occupying as an assured shorthold tenant. This was because the agreement was expressed to create a licence only and by clause 6 she was expressly stated not to have exclusive possession of the property. It was then contended that as the Applicant was not an assured tenant there was no jurisdiction to make a rent repayment order.

30. It is not necessary for the Tribunal to make any finding as to whether or not the Applicant was an assured shorthold tenant or not because, as explained above, the power to make an order applies equally in cases of licences. In the circumstances, therefore, the Tribunal was satisfied that, for the purposes of the Act, the Respondents were landlords and the Applicant was a tenant. This, combined with the conclusion that a specified offence has been committed, gives rise to the power to make an order.

3. What is the Maximum Amount that Can Be Ordered

31. Although the initial agreement between the parties expired in February 2020, it was accepted by the Respondents that the Applicant was in occupation of the property for the whole of the 12-month period which is the subject of this application. It was also accepted by them that the rent she paid was £939 per month and that this rent was received by them for the whole of the 12-month period (see para 19 at page R16 and also the bank statements at pages A36 to A75).

32. It follows that the Tribunal has jurisdiction to make an order for the whole of the period sought and that the maximum sum which can be ordered to be paid is £939 x 12, which amounts to £11,268.

4. Should There Be a Reduction in the Amount Ordered

33. The Tribunal then considered whether there was any basis for reducing the amount that should be ordered to be paid. In doing this the Tribunal considered a number of factors as follows;

(a) Discounts from the Rent

34. The Respondents were at pains to argue that the amount which the Tribunal ordered to be paid should be reduced to take account of a number of items including, among other things, the utility bills and council tax, which were included in the rent, together with the costs of broadband, water rates, the TV licence, and the service charge payments which were made by the Respondents in respect of such things as management fees, accountancy charges, communal heating and hot water, the entryphone system, lift repairs, and a porterage service. (See the extensive detail at pages R14 to R16). Their argument was that they were providing the Applicant with up-market services, including such extras as a porterage service, which she should be expected to pay for.

35. In the Tribunal's view this argument was unsustainable. The decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) makes it clear that when the Tribunal has the power to make a rent repayment order, it should be calculated by starting with the total rent paid by the tenant within the time period allowed under section 44(2) of the Act, from which the only deductions should be those permitted under sections 44(3) and (4).

36. In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the "starting point" in the sense that it is used in criminal proceedings, not least because, unlike in criminal proceedings, the amount cannot go up in aggravated cases, but can only come down. Although in the case of *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke said that this issue may be a matter for a later appeal, at present the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered below, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.

37. Whilst the law had previously been taken to require a consideration of the extent to which the landlord has profited from the rent charged, which may justify making reductions for such items as service charge payments, *Vadamayalan* makes it clear that there is no support for limiting an order to the landlord's profits, and that any such principle should no longer be applied. This is made clear at paragraph 15 of the judgement;

> "*That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests.*

> *Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.*"

38. The Tribunal concluded that the proper approach is as follows. Firstly, an order under section 43 is not a fine and so should not be approached in the same way as a fine, where the maximum amount is only paid by those who have behaved particularly badly. Neither is an order a penalty to deprive landlords of their profits, nor is it a repayment of only that part of the rent which relates solely to the occupation of the property rather than the use of services provided with the property.

39. In the view of the Tribunal, as an expert body, the rent set out in such agreements as that in this case amounts to the price the landlord is prepared to offer, and the tenant is prepared to accept, not just for the property itself but for whatever services or inclusive bills it comes with. Landlords and letting companies offer services and inclusive bills not out of some altruistic motives but to ensure that the property is attractive in the market, so that they can find tenants prepared to pay the amount asked in rent. Therefore, there is no basis, either in law or in practice, for disregarding part of the rent to reflect the costs of such services or inclusive bills.

40. The Tribunal accepted that the judgment in *Vadamayalan* did contemplate the possibility of some reduction in situations where the rent included the cost of utilities, in the following passage (at para 16)

> "*In cases where the landlord pays for utilities, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities.*"

41. This was an *obiter* observation which was not part of the rationale for the decision in *Vadamalayan* and so is not binding on this Tribunal. In any event the rationale would only appear to apply in cases where the cost of utilities to the landlord varies according to the amount consumed by the tenant. In this case, the only example of that is electricity. The Respondents' evidence was that water rates and broadband charges were charged at a flat rate, so consumption was not relevant. Obviously, such things as the council tax and the television licence are flat charges.

42. Further, if there were to be a deduction for electricity, the obvious question arises as to how that is to be fairly calculated where there are several occupiers all making use of the same supply. No such calculation can be made other than by assuming that all occupiers used an equal share.

43. Also, in the context of this particular case, it was clear that the way in which the property was managed was such that it would not be appropriate in any event to make a deduction for electricity costs. The Third Respondent's evidence was that there was a block heating system which provided heating to the property but that he chose not to turn this on because he found it easier to provide the occupiers with portable electric heaters. In the view of the Tribunal providing a form of heating which, in its view, was likely to contribute significantly to the overall electricity cost, rather than using the communal system for the whole building, means that in any event it would not be appropriate to make a deduction for the costs of electricity.

44. Finally, the approach to utilities referred to above presupposes that the fact that no charge is made for utilities has not in itself been factored into the level of rent charged. There was no evidence that that is the case. In practice the Tribunal would expect, in cases where the occupiers do not themselves pay for utilities, for a landlord to take account of the likely cost of those utilities when setting the rent level.

(b) Conduct of the Landlord

45. As explained above when considering the possibility of a defence of reasonable excuse, the Tribunal was satisfied that the Respondents had started the process of preparing the property to be licensed as an HMO in May 2019. This was when, according to the Third Respondent, he started to see whether he could complete the application form and he realised that he needed plans of the property and, according to his witness statement, started speaking to fire experts, plumbers, electricians and LBC. In the view of the Tribunal he knew that he needed a licence to let the property, or at the very least, had reason to believe that a licence would be needed. Despite this he let the property to the Applicant. Whilst some further steps were taken from February 2020 onwards, no actual licence application was made until November 2020.

46. The Tribunal accepts that the Respondents do not rent any other property and are, therefore, inexperienced. However, this is not a case of mere inadvertence or complete ignorance. Far from it. The Respondents chose to rent the property to the Applicant several months after they were aware at the very least of the possibility that they would need a licence to do so, yet they carried on regardless. The Tribunal considered this to be a serious aggravating factor.

47. Whilst the Applicant in her case has raised a number of relatively minor complaints about the Respondents, it is not necessary to consider them here as the Tribunal was satisfied that, even if made out, they would make no material difference to its overall assessment of the amount to be ordered to be paid. It therefore took no account of them.

48. Similarly, the Tribunal was prepared to accept that the Respondents did what they could to be good and flexible landlords as set out in

paragraphs 8 and 9 of the Third Respondent's witness statement (page R7). These aspects of good conduct are, however, inadequate to outweigh the Respondents' culpability in letting the property when they did with the knowledge that they had.

(c) Financial Circumstances of the Landlord

49. Apart from stating that the property is the only property owned by the First and Second Respondents, and that the Third Respondent owns his family home jointly with his wife (para 2 at page R6) no information was given to the Tribunal about the Respondents' financial circumstances. The Tribunal therefore concluded that there was insufficient evidence to justify any deduction on this basis.

(d) Convictions

50. The Tribunal accepted that the Respondents had no relevant convictions.

(e) Conduct of the Tenant

51. The final issue to consider was the conduct of the Applicant. A number of complaints were made by the Respondents about the Applicant's conduct. These were as follows;
    (a) the Applicant did not clean her room adequately and allowed limescale to build up on her shower head;
    (b) there was damage to a sofa and the oven and microwave were filthy;
    (c) failure to pay for extra electricity to cover the times when the Applicant was working from home;
    (d) the Applicant's boyfriend was living with her in breach of the tenancy agreement;
    (e) refusal to pay for replacement keys;
    (f) the poor condition in which the Applicant left the property, including damage to a mattress
    (g) failure to give the required notice

52. The Tribunal bore in mind that the issues raised as items (a), (b), (e) and (f) above are substantially the same as were considered in an adjudication under the Deposit Protection Service Dispute Resolution Rules which appears at pages AS45 to AS52. It was accepted by the Respondents that there was no evidence before the Tribunal which had not been put before the adjudicator.

53. In that adjudication the Applicant accepted that £60 should be deducted from her deposit in respect of cleaning (page AS45). It follows that this has already been taken account of and should not be further deducted as this would amount to a double penalty.

54. The Respondents sought to withhold a further £5 in respect of cleaning, £120 for missing keys, £649 for damage to a mattress, and £37.50 for damage to a sofa. The adjudicator concluded that the Respondents had failed to show on the balance of probabilities that the Applicant was in

breach of any of her liabilities or obligations in respect of any of these claims and made no award to the Respondents.

55. Whilst the decision is not one which is binding on this Tribunal, nevertheless the Tribunal concluded that the adjudicator's findings were consistent with the evidence before the Tribunal and it also found the adjudicator's reasoning persuasive, and it adopted the approach the adjudicator had taken. Taking the evidence before it as a whole the Tribunal concluded that it, too, was not satisfied that the Applicant was in breach of her obligations as alleged for the simple reason that the Respondents had provided insufficient evidence to establish their case. That being so, there was no basis for reducing the amount of any sum ordered to be paid.

56. With regard to item (c) above, the Respondents' own case was that there was no provision in the agreement between them and the Applicant requiring her to pay for electricity. In essence, therefore, by inviting her to pay for electricity they were seeking to vary the agreement. Any refusal by the Applicant to do so was not itself a breach of the agreement and nor was it, in the view of the Tribunal, an unreasonable act which merits any deduction from the amount ordered to be paid.

57. The Respondents argued that the Applicant was in breach of her tenancy agreement as she had her boyfriend living with her. They accepted that clause 16 of their agreement with her provided that overnight guests were permitted but that they should not stay more than occasionally (see para 11 at page R8). Their case was that he was there more than occasionally and, indeed, they argued that he was living there permanently. In his evidence the Third Respondent accepted that he did not complain about this to the Applicant, however he said that this was because he did not know it was happening.

58. The Applicant's evidence in answer to questions from the Third Respondent was that her boyfriend stayed now and again and that he lived in North London at the time. She said that he did stay occasionally and that, on average, this amounted to about once a week, though it varied from week to week. She was asked about her e-mail to the Third Respondent dated 7 October 2020 when she gave notice in which she stated "*I will be moving out with my boyfriend at the end of the month*" (page A36*)*. She said that this was a reference to her moving together with her boyfriend to a new place, she denied that he was living with her on a long-term basis.

59. The Respondents also relied on an e-mail dated 25 September 2019 from another tenant which referred to the Applicant having a guest to stay (page R71). However, this document gave no indication of the length and/or frequency of these stays. The Tribunal also noted that the Respondents had not provided any witness statements from any of their other tenants which stated how often the Applicant's boyfriend

was staying and nor was there any other evidence to show that he was living there full-time as alleged.

60. The Tribunal noted that clause 2.11 of the agreement in fact prohibited guests altogether (page A26) and that clause 16, which allowed occasional guests, only applied to terms greater than 6 months. However, it noted that it was clause 16 that was expressly relied on by the Third Respondent in his witness statement. Also, the term granted was from 7 August 2019 to 7 February 2020, which is in fact a period of 6 months and 1 day, so is a term greater than 6 months.

61. The Tribunal accepted that the Applicant's boyfriend was staying at the property on average once a week. There was insufficient evidence to show that he was staying there more often. The Tribunal was not satisfied that the comment in the e-mail of 7 October 2020 was sufficient to establish otherwise. Whether such frequency of stay was more than "occasional" is a moot point. However, even if it were, and thereby amounted to a breach of the agreement, the Tribunal concluded that any such breach was not significant enough to warrant a reduction in the amount ordered to be paid.

62. The final complaint was that the Applicant had not given four week's notice as required by the holder of a statutory periodic tenancy – see para 12 at page R9. This argument is inconsistent with the Respondents' contention that the Applicant is a mere licensee. The agreement itself is somewhat unclear as to the amount of notice which the Applicant is required to give – clauses 7 and 8 appear to be the relevant provisions but it is not clear how long the notice period is where, as here, it states that early termination is not applicable.

63. It was accepted that all rent due had been paid for the period in question. The Respondents' case was that as notice was given on 7 October 2020, it should have expired 4 weeks later on 4 November. However, it is difficult to see what prejudice the Respondents have suffered even if short notice was given. As the Respondents did not apply for an HMO licence until 6 November 2020, any letting in the interim period would, in any event, itself have been an offence. In the Tribunal's view, therefore, any giving of short notice did not, in any event, merit any reduction in the amount to be ordered to be paid.

64. Taking all the matters set out above into account, the Tribunal was satisfied that there was no basis for deducting any amounts from the maximum amount which the Tribunal may order. It therefore decided to make a rent repayment order for the benefit of the Applicant in the sum of £11, 268.

65. The Applicant also sought an order under rule 13(2) of the Rules for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicant had succeeded in her application, it was just and equitable to make such an order.

66. Although the Applicant's application also sought the recovery of legal costs, this was not pursued at the hearing.

Name: Tribunal Judge S.J. Walker **Date:** 10th July 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

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

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

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

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

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

(1) 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.

(2) 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.

(3) 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).

263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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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.

Section 52 Interpretation of Chapter

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"relevant award of universal credit" means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.