



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : LON/00AY/HMF/2020/0131

Property : 45 Selden Walk, London N7 7RL

Applicants : Omar Reyes Castro
Michael Burton
Vasileios Podaras
Thomas Gates

Representative : Justice for Tenants

Respondents : Masuma Sultana
Mohammed Sobirul Hoque

Representative : Stephensons solicitors

Type of Application : Application for a rent repayment order
by tenants
Sections 40, 41, 43, & 44 of the Housing and
Planning Act 2016

Tribunal : Judge Nicol
Mr A Fonka

**Date and Venue of
Hearing** : 19th April 2021;
By video conference

Date of Decision : 27th April 2021

DECISION

1) The Respondents shall pay to the Applicants Rent Repayment Orders as follows:

- **The First Applicant** £5,400
- **The Second Applicant** £7,239.90
- **The Third Applicant** £8,023

- **The Fourth Applicant** **£8,114.18**

2) The Respondents shall further reimburse the Applicants their Tribunal fees totalling £300.

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

Reasons

1. The Applicants were tenants at the subject property at 45 Selden Walk, London N7 7RL, a house with 5 bedrooms (one created from a larger living room by the insertion of a partition wall), 2 bathrooms and a kitchen. The Applicants lived at the premises as follows:
 - The First Applicant (Castro) was in Room 4 from 1st July 2019 to 30th April 2020 at a rent of £540 per month;
 - The Second Applicant (Burton) was in Room 5 from 18th June 2019 to 6th May 2020 at a rent of £690 per month;
 - The Third Applicant (Podaras) was in Room 3 from 1st May 2018 to 15th September 2019 at a rent of £700 per month; and
 - The Fourth Applicant (Gates) was in Room 2 from 7th July 2018 to 5th September 2019, initially at a rent of £736 per month and, from June 2019, £693 per month.
2. The Respondents are the joint freeholders of the property. They let the whole property to London Quays Ltd through their agents, Loft Style Properties, for 12 months from 23rd April 2018. Through three companies, they have a portfolio of over 13 other properties which they let out.
3. The Applicants each seek a rent repayment order against the Respondents in accordance with the Housing and Planning Act 2016 (“the 2016 Act”).
4. The hearing of this matter was delayed by the restrictions on the Tribunal’s work arising from the COVID-19 pandemic. Eventually, the matter was heard on 19th April 2021 by remote video conference. Unfortunately, the original video platform did not work and an alternative virtual room was provided through the Tribunal – this resulted in a delay in starting the hearing by over an hour.
5. The attendees were:
 - The four Applicants;
 - Mr Alasdair McClenahan from Justice for Tenants, representing the Applicants;
 - The First Respondent; and
 - Ms Lara McDonnell, counsel for the Respondents.

6. The four Applicants and the First Respondent had all given witness statements on which they were cross-examined. The Second Respondent did not attend due to work commitments but had provided a witness statement.
7. The documents available to the Tribunal consisted of the following in electronic form:
 - A bundle compiled by Justice for Tenants;
 - A bundle compiled on behalf of the Respondents;
 - A smaller reply bundle, also compiled by Justice for Tenants;
 - A skeleton argument from Ms McDonnell; and
 - A full copy of the tenancy agreement between the Respondents and London Quays Ltd (page 4 having been missing in the bundle).

The offence

8. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondents were guilty of having control of an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act”).
9. The offence must be proved beyond a reasonable doubt but the Upper Tribunal recently provided the following guidance in *Opara v Olasemo* [2020] UKUT 96:

For a matter to be proved to the criminal standard it must be proved “beyond reasonable doubt”; it does not have to be proved “beyond any doubt at all”. At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells them that it is permissible for them to draw inferences from the evidence that they accept. In this case there were obvious inferences to be drawn from the evidence, both about the eviction and about the circumstances of the other tenants. It may be that the FTT lost sight of those inferences and set the bar of proof too high.

10. The property is 2 storeys and was not subject to the mandatory licensing scheme under the 2004 Act until the Licensing of Houses in Multiple Occupation Order 2018 came into force on 1st October 2018.
11. The local authority is the London Borough of Islington. Mr Nicholas Whittingham, Senior Environmental Health Officer with the Borough, provided the following information in correspondence:
 - (a) As of 2nd June 2020, there was no HMO licence for the property and there never had been one.
 - (b) No licence application had been made for the property.

12. The Respondents instructed an agency to apply for an HMO licence in June 2020, after all the Applicants had left the property, and Islington granted one on 17th November 2020. This is not relevant to whether a RRO should be made since it post-dates the Applicants' leaving.
13. The property was ostensibly let to each of the Applicants by Roman Lettings Ltd as agents. The Respondents claim that they were the agents for London Quays Ltd, although there is no evidence of this. Rather, according to paragraph 5 of the witness statement of the First Respondent, Roman Lettings Ltd sent payments direct to the Respondents after the fixed term of London Quays Ltd's tenancy had expired.
14. The Respondents pointed out that it is for the Applicants to prove that the property was used as a house in multiple occupation within the statutory meaning and that the Applicants by themselves would not constitute a sufficient number of households. Under Art.4(a) of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 requires occupation to be by 5 or more persons. However, the Applicants provided precise details of who occupied which rooms and when:
 - (a) Room 1 was occupied at all material times by Rocio Portill and Alejandro Susiac;
 - (b) The First Applicant replaced a woman called Yuka in Room 4;
 - (c) The Second Applicant swapped rooms with Mr Mirko Tocco who was still living in Room 2 when the Applicants left;
 - (d) The Third Applicant was replaced in Room 3 by a woman called Rebekka; and
 - (e) The Fourth Applicant was replaced in Room 2 firstly by a woman called Elizabeth and then by Mr Tocco.
15. The Tribunal found the Applicants to be credible witnesses. Further, given the details they were able to provide about their fellow occupants' work and lifestyle, their evidence on this point was also credible and the Tribunal accepts that there were at least 5 people in occupation at all relevant times.
16. Ms McDonnell suggested adverse inferences could be made from the fact that Mr Portill, Mr Susiac, Elizabeth and Rebekka were not applicants or witnesses but their mere absence, without more, was insufficient for the Tribunal to draw any inferences, adverse or otherwise.
17. Ms McDonnell also put it to each Applicant in cross-examination that Room 1 was, in fact, empty during their time in the property. Quite apart from the Applicants' evidence to the contrary, it would make no sense for the other four rooms to have been let while the largest and, therefore, almost certainly the most lucrative, was left empty.
18. The Respondents made a number of points in support of their claim that they were not responsible for the lettings to the Applicants and

others so as to create a house in multiple occupation. Firstly, they relied on the following clauses contained in the tenancy agreement with London Quays Ltd:

- 4.4.1 To use the Property as a private home only and not to carry on any profession trade or business at the Property.
 - 4.4.3 Not to use the Property for any illegal or immoral purposes.
 - 4.4.4 Not to use the Property in a way which contravenes a restriction affecting the Landlord's freehold (or superior leasehold) title which the Landlord has brought to the Tenant's attention.
 - 4.4.12 Not to assign or sublet the Property or any part of the Property and not to part with possession or share occupation of the Property or any part of it save that the Tenant may permit a director or employee of the Tenant to occupy the Property, subject to that employee having provided satisfactory references to the Landlord.
 - 4.4.13 Not to permit any person to occupy the Property as a lodger.
19. However, it is clear beyond any doubt that the Respondents never relied on these clauses or intended relying on them:
- (a) Clauses 4.4.12 and 4.4.13 constitute an absolute prohibition on any form of subletting. This would mean that London Quays Ltd or their directors or employees would be the only possible occupiers. However, having quoted these clauses in paragraph 10 of their Position Statement, they say in paragraph 11, "The Respondents reasonably believed the Property would be occupied by one household." As clarified in paragraph 3 of the First Respondent's witness statement, he meant that he thought the property would be let to one family but, not only is there nothing in the agreement saying this, it would constitute a breach of clause 4.4.12.
 - (b) At paragraph 2 of his witness statement, the First Respondent stated that he and his wife "decided to delegate responsibility of the management of the Property." At paragraph 3, he stated, "It was agreed that London Quays would take over the full management of the Property." However, the agreement does not say this.
 - (c) The tenancy agreement between the Respondents and London Quays Ltd purported to be an assured shorthold tenancy. However, London Quays Ltd would not have been able to comply with section 1(1) of the Housing Act 1988, not being an individual and not occupying the property as their home. It is not credible that a landlord with such a large portfolio and a company in the business of letting out residential property would not between them have known this. They would have known that the tenancy agreement was not what it purported to be.
 - (d) By letter dated 3rd March 2020, London Quays Ltd set out their "Guaranteed letting model":
 - In order for us to guarantee the rent in our room letting business and for us to ensure that all our landlords are paid, our business

needs to be in a position where the occupancy level of ALL our properties are above 90%. All rents collected are then placed in a 'pool.' Each individual landlord is then paid their guaranteed sum from this 'pool' allowing landlords to be paid their guaranteed amount even when their individual property is not at full occupancy or if a tenant fails to pay.

The First Respondent stated in evidence that he was aware that this was their business model from the outset, even before they signed their tenancy agreement with London Quays Ltd.

- (e) By letter dated 18th April 2018, the Respondents' agents, Loft Style Properties thought it necessary to state to London Quays Ltd, "you are responsible for ... any licencing requirements set out by the local authority. The property current does not hold an HMO license." Such a statement would have been entirely unnecessary if the Respondents genuinely believed there was no possibility of an HMO being created.
20. The Respondents also relied on Loft Style Properties' letter of 18th April 2018 to show that obtaining any requisite HMO licence was the responsibility of London Quays Ltd, not theirs. However, it is not possible to contract out of the licensing or RRO provisions. Liability is established by statute. Section 263(1) of the 2004 Act defines a "person having control" as the person who receives the rack-rent of the premises or who would so receive it if the premises were let at a rack-rent. Subsection (2) defines "rack-rent" as a rent which is not less than two-thirds of the full net annual value of the premises.
21. The Respondents let the property to London Quays Ltd at a monthly rent of £2,700. This was an investment property for the Respondents and there is no evidence that they intended to do anything other than realise that investment. The First Respondent stated in evidence that he thought the market rent was around £3,000-£3,200 but the property was let for slightly less to allow London Quays the margin they needed to make a profit from their sub-letting. In return, the Respondents were relieved of the need to manage the property themselves.
22. Ms McDonnell pointed out that £2,700 might be less than two-thirds of the total amount that the property was sub-let for to all the tenants when the rent from Room 1 was added to the rent from the Applicants. However, while the total amount of the rents for sub-letting would be evidence of the value of the property, it is in no way conclusive and it is not essential to know the precise amount of that total. The Tribunal pointed out to the parties that it is an expert tribunal, able to rely on its own knowledge and expertise. The Tribunal is satisfied that the First Respondent's estimate of £3,000-£3,200 per month was not an unreasonable estimate of the property's value at the time London Quays Ltd were granted the tenancy.
23. In the circumstances, the Tribunal is satisfied that the Respondents received a rack-rent for the property and, therefore, satisfied the

definition of persons having control of the property. The Upper Tribunal confirmed recently in *Rakusen v Jepsen* [2020] UKUT 298 (LC) that there may be more than one person who can be so defined. This means that both the Respondents and London Quays Ltd may satisfy the definition simultaneously.

24. The Respondents also raised the defence of reasonable excuse under section 72(5) of the 2004 Act on the basis that both the need for a licence and the lack of any licence were the fault of London Quays Ltd. However, the Respondents gave the strong impression that they did not care so long as the rent was coming in:
- (a) The Respondents made no effort whatsoever to check on London Quays Ltd's activities.
 - (b) Their tenancy could have included, but did not, terms which would have allowed for a minimal degree of supervision such as regular inspections and the provision of copies of any letting agreements entered into.
 - (c) They made no effort to check what had happened when the rent payments started to come from a different company.
 - (d) The First Respondent airily suggested that the tenancy with London Quays Ltd would have continued on a monthly basis when the fixed term expired but was unable to say how that was the case. Since it was not an assured tenancy, the statutory provision to that effect would not have applied. When pushed by the Tribunal, he suggested that there was an agreement to that effect but he could not come up with any evidence of this, let alone any details of when or how this agreement was reached.
 - (e) When they found out that a house in multiple occupation had been created, they made no effort to find out about the tenants, their agreements or what had happened to them. According to the First Respondent, his brother eventually went round, by which time there were no tenants left in occupation.
25. The Respondents had the power to ensure that London Quays Ltd kept within the law. They made no effort whatsoever to exercise that power. Therefore, London Quays Ltd's defaults provide no basis for any kind of reasonable excuse.
26. Therefore, the Tribunal is satisfied so that it is sure that the Respondents committed the offence of having control of an HMO which is required to be licensed but is not so licensed.

Rent Repayment Order

27. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller*

[2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation.

28. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

9. In *Parker v Waller* ... the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.

10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be “such amount as the tribunal considers reasonable in the circumstances”. ... With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):

“There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable.”

11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. ... Paragraph 26(iii) of *Parker v Waller* is not relevant to the provisions of the 2016 Act; nor is the decision in *Fallon v Wilson* [2014] UKUT 0300 (LC) insofar as it followed that paragraph.

12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.

13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament’s intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord’s profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord’s profit is impossible to

justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. 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.
16. In cases where the landlord pays for utilities, as he did in *Parker v Waller*, 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. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.
17. Section 249A of the 2016 Act enables the local housing authority to impose a financial penalty for a number of offences including the HMO licence offence, as an alternative to prosecution. A landlord may therefore suffer either a criminal or a civil penalty in addition to a rent repayment order. ...
18. The President deducted the fine from the rent in determining the amount of the rent repayment order; under the current statute, in the absence of the provision about reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.
19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament

intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. ...
29. On the basis of the decision in *Vadamalayan*, when the Tribunal has the power to make an RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the 2016 Act, from which the only deductions should be those permitted under section 44(3) and (4). 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”. However, he said that this issue is a matter for a later appeal. In the meantime, 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.
30. The amounts claimed by the Applicants are:
- | | | |
|------------------------|--------------------------|-----------|
| • The First Applicant | 10 months x £540 | £5,400 |
| • The Second Applicant | 10 months 18 days x £690 | £7,239.90 |
| • The Third Applicant | 11 months 15 days x £700 | £8,023 |
| • The Fourth Applicant | 8 months 7 days x £736 | |
| | + 3 months x £693 | £8,114.18 |
31. In considering the amount of the rent repayment orders, the Tribunal must take into account the conduct of the parties, the landlord’s financial circumstances and whether the landlord has been convicted of a relevant offence.
32. The Respondents have not been convicted of any such offence. They presented evidence that they had accepted just 50% of their rent entitlement from London Quays Ltd due to the effects of the COVID pandemic on London Quays Ltd’s income base but there was no evidence to suggest that they could not afford to pay the rent repayment orders, whatever level they were set at.
33. There was no suggestion that the Applicants’ conduct had been anything other than exemplary. The Respondents’ conduct, however, has been set out above. Ms McDonnell pointed to their previous good character and the fact that they eventually got a consultant to inspect so

that they could apply for a licence but, at most, this was too little too late.

34. In the circumstances, the Tribunal is satisfied that there is no basis for reducing the amounts claimed and that rent repayment orders should be made for the sums set out in paragraph 30 above.
35. The Applicants also sought reimbursement of their Tribunal fees, £100 for the application and £200 for the hearing, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the fact that the application has been successful, and in the light of all the circumstances of this case, the Tribunal has concluded that it is appropriate to order reimbursement.

Name: Judge Nicol

Date: 27th April 2021

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.

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.