FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/HMF/2020/0112**
Property	:	**197A Lewisham Way, London SE4 1UY**
Applicants	:	**Athina Ofosu** **Samuel Ofosu Amoako**
Representative	:	**Justice for Tenants**
Respondent	:	**Kwaku Bawuah Asare-Konadu**
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 P Roberts Dip Arch RIBA**
Date and Venue of Hearing	:	**19th March 2021;** **By video conference**
Date of Decision	:	**19th March 2021**

DECISION

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1) **The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £7,360.**

2) **The Respondent 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 197A Lewisham Way, London SE4 1UY, a 4-bedroom flat, from 29th October 2016 until 15th March 2020 at a monthly rent of £700. They had one bedroom and shared kitchen and bathroom facilities with at least 3 other households at all times.

2. The Respondent is the joint leasehold owner of the flat but his is the sole name on the original tenancy agreement as the landlord.

3. The Applicants seek a rent repayment order against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act") in the sum of £8,045.21.

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 March 2021 by remote video conference. The attendees were:

   - Ms Ofosu, the first Applicant (the second Applicant is her partner but he did not attend);
   - Mr Alasdair McClenahan from Justice for Tenants, representing the Applicants; and
   - The Respondent, representing himself. He was provided with facilities at the Tribunal's offices to attend from there.

5. The documents available to the Tribunal consisted of:

   - An electronic bundle compiled by Justice for Tenants;
   - A paper bundle compiled by the Respondent; and
   - A smaller electronic reply bundle, also compiled by Justice for Tenants.

The offence

6. 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 have alleged that the Respondent was guilty of having control of or managing 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").

7. The local authority is the London Borough of Lewisham. Mr Blaise Macklin, HMO Licensing and Enforcement Officer with the Borough, provided the following information in correspondence:

   (a) An additional HMO licensing scheme covering the Borough has been in force since 11th February 2017. The Applicants' bundle included a copy of the official designation of the area for additional licensing.

   (b) On 10th August 2018 he issued a formal Notice of HMO Declaration for the property under section 255 of the 2004 Act. A copy of the Notice

was in the Applicants' bundle. It has never been appealed and has remained applicable.

(c) As of 30th April 2020, there was no HMO licence for the property.

(d) The Respondent made an application for an HMO licence, with Lewisham's help, in January 2020 but the payment failed. On that basis, there has never been a valid application.

(e) Lewisham intend to issue the Respondent with a Financial Penalty Notice under section 249A of the Housing Act 2004. The Respondent said that the Notice was issued in August 2019 and his appeal against it is pending in this Tribunal.

8. The Respondent admitted that there should have been an HMO licence for the property and that there wasn't one before at least 30th January 2020. Therefore, it is beyond any reasonable doubt that the Respondent committed a relevant offence, namely having control of or managing a property which should have been licensed as an HMO but was not.

9. However, the Respondent put forward grounds for two defences.

10. It would be a defence under section 72(4)(b) of the 2004 Act if an HMO application had been made. On 6th January 2020 the Respondent attended at Lewisham's offices and, with the assistance of a council officer, Mr Fraser Amory, completed an application online. On 31st January 2020 he purported to pay the requisite fee of £2,000 (£500 per household for the first application by an unaccredited landlord). The Respondent's understanding was that his application must have been accepted because:

(a) It was not rejected when he clicked on the "Submit" button;

(b) The online process then asked him to pay the fee;

(c) He paid the fee in the presence of Mr Amory and was given a receipt (a copy was in his bundle); and

(d) Lewisham has taken no further enforcement action.

11. However, in an email dated 30th April 2020 Mr Macklin told the Applicants that the property still did not have an HMO licence and, "A HMO application was made in January 2020 but the payment failed and hasn't been rectified."

12. The Respondent clearly misunderstood the application process. He is wrong to think that a licence is granted merely by completing the correct form and proffering the relevant fee. Lewisham still had to review and decide upon the application. It is now over 13 months since the Respondent sought to make his payment. If he were going to be granted a licence based on his application and payment in January 2020, it would have happened by now. The Tribunal is satisfied that the Respondent never successfully completed his application and, even if he believed he had in early 2020, he knows by now that he did not.

13. The Respondent's case is that Lewisham, after pestering him since at least November 2018 to obtain a licence and issuing a penalty notice for his failure to apply for one, have not communicated with him since his payment on 31st January 2020. The Respondent stated emphatically that he had been expecting a reply within about two weeks. Despite the fact that he is potentially subject to criminal sanctions and has not seen any return on his payment of £2,000, his only action in the 13 months since has been to make one phone call in which an officer, whose name the Respondent does not know, simply promised to write. This is not credible.

14. In the Tribunal's opinion, it is far more likely that Lewisham did communicate to the Respondent that his payment had failed and the absence of communication since that time is because Lewisham have left it to the Respondent to remedy this and he has chosen not to do so.

15. The Respondent's failure to chase this matter up with Lewisham since January 2020 is consistent with his behaviour prior to that. Lewisham's additional licensing scheme has been in force since 11th February 2017. The Respondent did not even try to suggest that he had an excuse for failing to seek a licence until Mr Macklin chased him by email dated 14th November 2018. He did not say why he did not respond to the HMO Declaration in August 2018.

16. After November 2018 the Respondent sought to explain the lack of any HMO licence application by saying that the link in Mr Macklin's email did not take him to the relevant webpage. This apparently happened again once in 2019. When the Respondent finally reached the relevant page, he was unable to create an online account. Eventually, in December 2019 he took up an offer from Lewisham for him to come to their offices to complete the application there. Having been shown what he needed to do at their offices, he tried to finish the process at home but again it failed. He finally completed the process in January 2020 as described above.

17. In summary, the Respondent blamed a lack of support from Lewisham for his failure to make an HMO licence application. This is nonsense. Even on his own much-abbreviated timetable, he was given around 14 months to make his application, during which time evidence from the Applicants shows that Lewisham had granted hundreds of HMO licences. He made a grand total of 4 attempts to complete the application online from home. He did not seek advice from anyone such as a professional managing agent or a solicitor. He relied entirely on advice from Lewisham when they happened to initiate it. He did not ask any questions, including whether there was an alternative application process by paper, as many authorities offer. It is for landlords to comply with the law, not for the local authority to spend their limited time spoonfeeding them until they do.

18. It would be a defence under section 72(5) of the 2004 Act if the Respondent could establish on the balance of probabilities that he had

a reasonable excuse for not licensing the property. He has failed to discharge that burden.

19. Therefore, the Tribunal is satisfied that the Respondent has no defence to the charge that he committed the offence of failing to licence his HMO.

Rent Repayment Order

20. 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.

21. 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.
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> 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):
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> > "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."
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> 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.
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> 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.
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> 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. …

22. 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.

23. The Respondent's submissions appeared to have been compiled on the basis of the old law or a misunderstanding of it. The Respondent talked of his profit from letting the property and of all his expenses, including repair costs and mortgage payments. He also compared his behaviour with that of the Applicants, suggesting that it would be inequitable if the Applicants were to recover money beyond any reasonable calculation of their loss. None of this is relevant. A RRO is deliberately punitive and is not about compensating tenants or depriving the landlord of unearned profit.

24. Under section 44(4) of the Housing and Planning Act 2016, in considering the amount of the RRO, the Tribunal must take into account the conduct of the landlord and of the tenants and the landlord's financial circumstances.

25. The Tribunal is satisfied that the Respondent's conduct has fallen short of that required and expected of a professional landlord or of the professional managing agent which the Respondent claims to be. The Applicants assert that, quite apart from the failure to apply for an HMO licence for such a long time, the property was in a generally poor state and the Respondent failed to provide a proper service, including:

(a) The Respondent failed to secure the Applicants' deposit. The Applicants checked this with all 3 deposit schemes. The Respondent did not deny it. Moreover, when questioned about it, he answered instead that he had an agreement with the second Applicant to make deductions from the deposit at the end of the tenancy. The first Applicant denied this and it is inconsistent with the Applicants' behaviour throughout the tenancy (see further below) but, most importantly, it is a different issue, the only commonality being that it involved the deposit.

(b) In March 2019 the electrics failed, leaving the entire flat without heating or hot water. It took 4 days before the Respondent even identified a contractor to address the problem. He then gave the second Applicant's details as the landlord and the Applicants had to pay £1,700 to the contractor, Aspect, when they were sued for the bill. Again, they recovered the cost from the rent. The Respondent claimed that it was these deductions which the second Applicant agreed could come out of the deposit, which makes no sense.

(c) The boiler operated intermittently and was confirmed by British Gas as not fit for use. The Respondent eventually replaced it in October 2019 when the Applicants threatened to leave.

(d) Utility bills were supposed to be included in the rent but the Applicants often had to top up the gas or electricity themselves, covering the costs of all the tenants. They also recovered these sums by deducting them from the rent.

(e) The Applicants provided photos showing the cooker and the cupboard under the kitchen sink to be in a poor state. The Respondent accused the Applicants of causing this but then admitted that he had no idea which, if any, of the tenants was actually responsible. He justified blaming the Applicants on the basis that it was the responsibility of all the tenants to clear up after any of their number who did not do so themselves. Just as he tried to pass off the responsibility for applying for an HMO licence to the local authority, he tried to pass off his responsibility as a landlord to the tenants. When directly questioned by the Tribunal, he seemed to have no idea that it might be his obligation, rather than that of the tenants, to ensure that the property was managed to a satisfactory standard.

(f) The property was provided furnished. However, the bed in the Applicants' room was old, worn and of poor quality. When it finally broke, the Applicants had to buy a new one themselves.

26. For these reasons, the Tribunal is satisfied that the landlord's conduct supports a higher RRO than might have been the case without it whereas there was no reason to complain of the Applicants' conduct.

27. In relation to the Respondent's financial circumstances, he said that he was currently unemployed and the property would soon be empty as he had given the last two tenants notice to leave. However, he did not provide any evidence to suggest that he would have difficulty paying the amount claimed by the Applicants.

28. In accordance with *Vadamalayan*, deductions may be made for utilities included within the rent. The Applicants accepted that gas and electricity were included and, even when they paid for it themselves, they recovered the sums by deductions from the rent. However, the Respondent did not provide any evidence of what the actual costs were. He resorted to referring to WhatsApp messages in which he and the Applicants discussed expenditure during one particular month but that is insufficient evidence from which to extrapolate the costs over any other period. Mr McClenahan suggested that the average monthly cost might be around £150 for the 4-bedroom flat, to be divided by four between the relevant households. In the Tribunal's experience, this might be on the low side but it is difficult to go higher in the absence of any actual evidence. In the circumstances, the Tribunal decided that an appropriate deduction would be £40 per month.

29. The Respondent sought to include other sums within the same category of deductions. He pointed out that he paid the Council Tax but that is payable irrespective of a tenant's presence or conduct. He also relied on his maintenance costs but, as mentioned in *Vadamalayan*, those fall on the landlord in any event.

30. The Tribunal sees no reason to reduce the amount of the RRO below the maximum amount, other than by deduction to take account of the cost of the utilities, so that the monthly rate is £640 (£700-£60). The Applicants claimed for a period of 11½ months. Therefore, the Tribunal awards an RRO to the Applicants in the sum of £7,360.

31. 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:** 19th March 2021

Appendix of relevant legislation

Housing Act 2004

Section 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.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

(5) Every local housing authority have the following general duties–

(a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;

(b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and

(c) to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.

(6) For the purposes of subsection (5)(c)–

(a) "Part 1 function" means any duty under section 5 to take any course of action to which that section applies or any power to take any course of action to which section 7 applies; and

(b) the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence.

Section 61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or
(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations.

A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,
(b) references to a licence holder are to be read accordingly, and
(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

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).

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.