



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

Case reference : **LON/00BC/HMF/2020/0047**

Property : **Flat 2, 66 Aldborough Road South,
Seven Kings, Ilford IG3 8EX**

Applicants : **Mrs G and Mr M Kulikanskiene**

Representative : **Justice for Tenants (Ms Sherratt)**

Respondent : **Mr K Singh**

Representative : **Shoosmiths solicitors
Ms Cochrane of counsel**

Type of application : **Application for a Rent Repayment Order
Sections 40, 41, 42, 43 and 44 Housing and
Planning Act 2016.**

Tribunal members : **Judge Pittaway
Mr S Wheeler MCIEH
Mr J Francis QPM**

Date of Hearing : **3 and 4 November 2021**

Date of decision : **8 December 2021**

DECISION

Decisions of the tribunal

1. **No offence committed by the respondent under section 95(1) of the 2004 Act.**
2. **An offence was committed by the respondent under section 72(1) of the 2004 Act.**
3. **The applicants could amend the application to refer to the offence being committed under section 72(1) of the 2004 Act**
4. **The Tribunal does not have jurisdiction to consider the amended application as the addition to the application of the alleged offence under section 72(1) of the 2004 Act was made more than twelve months after the alleged offence had been committed.**

The Background

5. The tribunal received an application dated 24 March 2020 under section 41 Housing and Planning Act 2016 (“**the 2016 Act**”) for a rent repayment order in respect of Flat 2, 66 Aldborough Road South Seven Kings, Ilford IG3 8EX (“**the Property**”). The application stated that the offence was ‘Having control of, or managing , an unlicensed house, under Part 3 s.95(1) Housing Act 2004 which is an offence under s 40(3) of the Housing and Planning Act 2016’. It stated that the Property was ‘1-storey studio flat in a 2-storey detached house containing 2 studio flats’ and that the Property fell within a selective licensing area designated by Redbridge Council. The amount sought in the rent repayment order was £8,250 relating to the period 1 October 2018 to 29 June 2019.
6. On 15 February 2020 the Tribunal issued Directions. The Directions contemplated that a hearing would take place on 10 May 2021 by remote video conferencing and provided for the Applicants to provide a bundle to the tribunal which should include full details of the alleged offence and for the Respondent to provide a bundle which should include any defence to the alleged offence. The annex to the Directions makes it clear that the tribunal has to be satisfied beyond reasonable doubt that the landlord has committed one of a number of stated offences, which include the offence of controlling or managing an unlicensed house under section 95(1) of the 2004 Act and the offence of controlling or managing an unlicensed HMO under section 72(1) of the 2004 Act.
7. The hearing actually took place on 5 July 2021. Due to the complexity of the issues involved the tribunal did not make a decision but issued further directions which required the London Borough of Redbridge (the ‘**Council**’) to produce all documents and correspondence in their possession relating to:

- a. Flat 2, 66 Aldborough Road, South Ilford, Essex, IG3 8EX.
- b. Any and all other flats at 66 Aldborough Road, South Ilford, Essex, IG3 8EX.
- c. The entire property at 66 Aldborough Road, South Ilford, Essex, IG3 8EX.

The directions also required a senior member of the Council's licensing team to provide a witness statement detailing all correspondence and interactions relating to this property, as well as clarifying what types of licences were required for the various parts of the building and the specific units of housing within the building.

8. The Applicants were then directed to replead their statement of case by 31 August 2021 and the Respondent to replead his case by 28 September 2021, with the Applicants able to make a further reply by 26 October 2021.

Agreed matters

The parties are agreed that

9. At all relevant times the respondent was the 'person having control of' the property.
10. 66 Aldborough Road South is a 2-storey detached house which has been converted into flats. The ground floor consists of two self-contained studio flats (Flats 1 and 2) and one other room. The first floor is one flat that has five bedsits, 1 kitchen and 1 bathroom.

No party requested an inspection and the tribunal did not consider that one was necessary.

11. The applicants rented the property from the respondent from 22 March 2017 until 29 June 2019.

The Issues

12. The issues the tribunal were asked to determine were
 - Did the respondent commit an offence under section 41 of the 2016 Act?
 - Could the application, which alleged that the offence had been committed under Part 3 (section 92(1)) of the 2004 Act, be amended to reflect that the offence was under Part 2 (section 72(1)) of the 2004 Act?
 - Has the alleged offence been committed within twelve months of the application to the Tribunal?
 - Did the respondent have the statutory defence of having made an application to the Council for a licence, and if so from what date should the application be treated as having been made?

- Did the respondent have the statutory defence of ‘reasonable excuse’?
- The quantum of any RRO.

The Hearing.

13. The applicants were represented by Ms Sherratt of Justice for Tenants at the hearing and Ms Cochrane of counsel appeared for the respondent.

The parties provided the tribunal with hard copies of the bundles that had previously been submitted electronically, and it was to these hard copies that the tribunal was referred during the hearing. These included the Applicants’ Response to Respondent’s Statement of Response dated 27 October 2021.

Ms Cochrane provided a Skeleton Argument on 3 November 2021, which had previously been seen by Ms Sherratt. Ms Cochrane also provided written closing submissions on 4 November 2021.

14. The tribunal heard evidence from Ms Pule Chisokwa of the Council, from Mr and Mrs Kulikanskiene and from Mr Singh. It heard submissions from Ms Cochrane and Ms Sherratt.

Evidence

15. The following facts emerge from Ms Chisokwa’s witness statement.

On 1 October 2018 the Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018 came into force, revoking the requirement that for a mandatory HMO licence a property must have three or more storeys. On the same date the Council also introduced a selective licensing scheme for all rented accommodation that was not an HMO within an area which included the property. The Council had designated the area in which the Property is located as one subject to additional HMO licensing on 13 April 2017, being self-contained flats which had been converted without complying with relevant building regulations and which still did not comply with these.

16. Ms Chisokwa had advised Mr Singh when she visited 66 Aldborough Road South on 4 October 2018 of the existence of the three types of licence, advising him that if the house did not comply with building regulations it would require an additional HMO licence for the whole property but that if it complied it would require selective licences for each of the ground floor flats (Flats 1 and 2) and an additional or mandatory HMO licence for Flat 3, depending on the number of occupants.

In cross examination Ms Chisokwa accepted that the advice given in respect of the first floor Flat 3 was wrong but that correct advice had been given in respect of the need for the additional licence. Mr Singh had confirmed to her on 17 October 2018 that the building did not comply with building regulations.

17. Ms Chisokwa's witness statement states that on 22 November 2018 Mr Singh commenced a mandatory HMO licence application for Flat 1. On 12 December 2018 Ms Chisokwa advised Mr Singh that his application was for the incorrect licence and that the licence he should have applied for was an additional HMO licence. On 18 January 2019 Ms Chisokwa advised Mr Singh that he did not have to complete any necessary works before the additional HMO licence was applied for. On that date an additional HMO licence application was created in respect of Flat 3 but it was not submitted to the Council until 18 February 2019, at which point Ms Chisokwa handed the matter over to another officer, Mr Gary Ashley, to undertake the compliance inspection and Ms Chisokwa's involvement ceased. On 8 March 2019 the incomplete mandatory HMO licence application expired.
18. Ms Chisokwa's witness statement states that on 4 October 2019 the Licence Processing Team received an e mail from Justice for Tenants as Mrs G Kulikauskiene's representative, enquiring as to the licensing status of the building, and were advised that an additional HMO licence application had been submitted for the whole property.

During the hearing it became clear that the e mail was not from Justice for Tenants but from Flat Justice, an organisation then representing Ms Kulikauskiene. Flat Justice was advised that the Property was awaiting a compliance inspection.

19. On 10 January 2020 Justice for Tenants, by then acting as the applicants' representative, enquired whether there is any selective license in place or applied for in respect of Flat 2. It also enquired whether there was any HMO licence in place or applied for. This resulted in a request to Ms Chisokwa from the Licence Processing Team about the licence application at the property, and whether the additional licence covered the whole building. She responded advising that the property should have an additional HMO licence and a separate HMO licence, mandatory or selective depending on the number of occupants, for the first floor. Ms Chisokwa explained that the case was allocated to Ms Pauline Miller, Housing Enforcement Officer, with an inspection scheduled for 13 August 2020, of which inspection Ms Chisokwa had no details.
20. On 20 October 2020 Mr Sidhu, another Housing Enforcement Officer, was allocated the case to carry out a compliance inspection during temporary easing of covid-19 restrictions. Mr Sidhu met Mr Singh at the property on 17 March 2021, following which, at Mr Singh's request (through Ms Henry acting on his behalf), Mr Sidhu confirmed that an additional HMO licence was required for Flats 1 and 2 and the common parts, and that Flat 3 also required a mandatory HMO licence. On 22 March 2021 a mandatory HMO licence application was created for Flat 3 and on 5 April 2021 an additional licence application was created the whole property, the actual applications being submitted on 18 June 2021. On 13 April 2021 Mr Sidhu had replied to Ms Henry referring to the application for a mandatory HMO licence dated 22 November 2018, which was time-expired, and the additional HMO licence application for Flat 3, that had been submitted attached to the incorrect unit. He stated that this incorrect reference had been 'rectified' and concluded that

the application for the additional HMO licence application for the whole property should be treated as received on 18 January 2019.

21. Mrs Kulikanskiene gave evidence that Flat Justice had been approached to take the case but had refused to do so. She did not know why. The applicants had then approached Justice for Tenants. Mrs Kulikanskiene confirmed that it had always been the intention that both she and her husband should live there. Mrs Kulikanskiene had no information as to the occupation of the first floor but stated that the respondent did not live there, although he did come to the building to collect mail of previous tenants. In cross-examination she explained that only an initial enquiry was made to Flat Justice. Justice for Tenants were acting for the applicants by December 2019. As to the state of disrepair of the bathroom alleged by the respondent Mrs Kulikanskiene stated that the disrepair which the respondent stated they had caused had already existed when they moved in. They had not reported it to the respondent as they had taken the property in the state in which it was. The deposit which they had paid on taking the flat (which was not protected) was used in settlement of the last rent that they owed with the respondent's agreement.
22. Mr Kulikanskiene gave evidence that Flat Justice indicated that they would not act for the applicants following receipt of the e mail of 8 October 2019 from the Council. Mr Kulikanskiene also confirmed that it had always been the intention that both he and his wife should live there and no single occupant rate rebate had been claimed, as suggested by the respondent. Mr Kulikanskiene stated that the respondent only visited the building occasionally to collect rent.
23. Mr Singh gave evidence the number of Council employees who visited the property, and that the failure to submit the correct applications was a result of incorrect information received from the Council. Mr Singh did not refer to the visits by Ms Chisokwa in his witness statement. He also gave evidence as to his occupation of Flat 3, his belief that Flat 2 was only going to be occupied by one person and its state of repair when it was vacated by the applicants.
24. The tribunal has not set out in detail the evidence it heard on what might have affected any statutory defence available to the respondent nor the evidence it heard as to the quantum of any RRO as the decision turns on the preliminary issue as to whether it has jurisdiction to consider the amended application.

Submissions

25. It was Ms Cochrane's submission that the respondent had not committed an offence under section 95(1) of the 2004 Act as Flat 2 never required a selective licence because the building did not comply with Building Regulations 1991.
26. Ms Cochrane addressed the tribunal on whether the application, which alleged that the offence had been committed under Part 3 of the 2004 Act, could be amended to reflect that the offence was under Part 2 of the 2004 Act and

whether the repleaded case of the applicants did this. Ms Cochrane submitted that the applicants had failed to plead a breach of section 72 of the 2004 Act at any time, and in particular since December 2019 since when they had been represented by Justice for Tenants.

27. In the event that the applicants had pleaded a breach of section 72 of the 2004 Act, Ms Cochrane submitted that that the application was time-barred because the offence was not committed in the period of twelve months ending on the day the application was made. In her submission the offence under section 72 ceased on 18 January 2019, the date to which the Council had unilaterally backdated the correct additional HMO licence which was submitted on 5 April 2021. Alternatively it ceased on 17 February 2019 the day before the date upon which the application for the additional HMO licence for Flat 3 was effective, as the Council had treated that application for administrative reasons as relating to the whole building. In either case the application, made on 24 March 2020 was made more than twelve months after the date of the alleged offence.
28. If the application was not time-barred Ms Cochrane submitted that the period during which the offence was committed ceased when the respondent made an effective application. Ms Chisokwa had confirmed that the Council had the power to backdate the correct additional HMO licence (which was submitted on 5 April 2021) to 18 January 2019, so that the respondent had a defence under section 72(4) or section 95(3) of the 2004 Act from 18 January 2019.
29. Ms Cochrane also submitted that the respondent could rely on the statutory defence of reasonable excuse pursuant to section 72(5) or section 95(4) of the 2004 Act.
30. Ms Sherratt submitted that the application had been made in respect of an offence under Part 3 of the 2004 Act could be amended to reflect that the offence was actually committed under Part 2 of the 2004 because at the time the original application was made it was believed that the offence was one under Part 3, by reason of the information received from the Council.
31. Ms Sherratt submitted that whether or not the Council had the power to backdate the licence was not relevant. At the dates upon which the offence was committed Flat 2 did not have a requisite licence. For the same reason the respondent could not rely upon the defence of having made a duly made application which had been backdated. The backdating by the Council should not affect the determination of an RRO application.
32. Ms Sherratt submitted the respondent did not have a reasonable excuse for not obtaining a licence based on his claim that he received wrong/confusing advice. The wrong/confusing advice had been given in relation to Flat 3 not Flat 2. As early as October 2018 the respondent had known of the need for the additional licence for Flat 2.

The tribunal's decision and reasons

Offence under section 40

33. Section 40(3) of the 2016 Act lists the offences which entitle the tribunal to make a RRO. These include the breach of section 72(1) of the 2004 Act (control or management of an unlicensed HMO) and breach of section 95(1) of the 2004 Act (control or management of an unlicensed house).The Tribunal find that there was no offence committed by the respondent under section 95(1) of the 2004 Act. Flat 2 did not require a selective licence because the building as converted did not comply with the Building Regulations 1991. The Tribunal find that, as clarified by the Council in its evidence, the flat on the first floor (not the subject of this application) required a mandatory HMO licence and Flats 1 and 2 and the common parts of the building required an additional HMO licence.
34. The tribunal find that the respondent committed an offence under section 72 of the 2004 Act in not having an additional HMO licence for Flat 2.
35. By reason of the timing of the amendment of the application to amend the offence to one under section 72 the tribunal does not have to consider the statutory defences available to the respondent and in particular whether the Council has the power unilaterally to treat an application stated to relate to Flat 3 as relating to Flats 1, 2 and the common parts, nor does it have to consider whether the Council has the ability to backdate the application made in respect of the correct premises (Flats 1, 2 and the common parts) on 5 April 2021.

Did the applicants plead an offence under section 72?

36. The Tribunal find on the evidence before it that until the applicants had seen the witness statement of Ms Chisokwa which is dated 3 August 2021 they did not have actual knowledge that the licence required for the Flat 2 was not a selective licence but an additional HMO licence.
37. The applicants' repleaded statement of case of 7 September 2021 states that as the property did not comply with the 1991 Building Regulations 'it would seem that' an additional HMO licence was required under section 257 of the 2004 Act. At the hearing Ms Sherratt asked that the Applicants' Response to Respondents' Statement of Response, which incorrectly referred (at paragraph 47) to section 95(3) of the 2004 Act be amended to refer to section 72.
38. The tribunal find that the applicants intended to amend their application from alleging an offence under section 95 to alleging an offence under section 72.
39. The tribunal do not agree with Ms Cochrane that the applicants never pleaded a breach of section 72 of the 2004. The breach has not been clearly pleaded but the papers before the tribunal and the submissions by Ms Sherratt indicate that once the applicants knew that a selective licence was not required for the Flat 2 they intended to submit that there had been an offence section 72, in that Flat 2 did not have an additional HMO licence.

40. Under Rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal has wide powers to regulate its own procedure, including permitting or requiring a party to amend a document (Rule 6(3)(c)). In the circumstances of the statement by the applicants in their repleaded case and the submissions made by Ms Sherratt at the hearing the tribunal are able to consider that the application was amended by the applicants to refer to an offence under section 72 of the 2004 Act.

Was an offence committed under section 40 of the 2016 Act committed within twelve months of the date of the application to the tribunal?

41. The tribunal invited the parties to make submissions on the timing of the amendment to the alleged offence before it heard submissions. Neither party made submissions on the ability to amend the offence alleged in the application more than twelve months after 29 June 2019.
42. Section 41(2) (b) provides that a tenant may only apply for a rent repayment order if the offence was committed in the period of twelve months ending on the day on which the application was made.
43. On the evidence before the tribunal the earliest date upon which the applicants sought to amend their application to allege an offence under section 72 was 7 September 2021 and that is more than 12 months after the end of the period during which the applicants allege the offence was committed. They state that the offence ceased on 29 June 2019. If the offence had been one under section 95 the application was in time. The offence was in fact one under section 72 and the first reference to that section by the applicants was on 7 September 2021 which is more than 12 months after the alleged offence was last committed. The Tribunal has no discretion to add a further offence to the application after the expiry of the twelve month limitation period prescribed by section 41(2)(b) of the 2016 Act .
44. While not referred to by the parties the recent authority *Gurusinghe v Drumlin Limited* [2021] UKUT 268 (LC) confirms that the FTT has no jurisdiction to add a respondent to an RRO application against an immediate landlord after the expiry of the 12 month limitation period prescribed by section 41(2)(b) of the 2016 Act. The basis of the decision was that the 2016 Act imposed a strict limitation period of twelve months for any application for a rent repayment order and made no provision for extending the twelve month deadline. The tribunal finds that similarly the FTT has no jurisdiction to amend the alleged offence after the expiry of the twelve month period.
45. The tribunal accept that when the applicants made the application was they believed that the correct licence for Flat 2 was a selective licence. It is unfortunate that the matter was not addressed earlier so that the application could have been amended to refer to the correct offence within the twelve months of the offence being committed. Given that Flat 2 is in a house converted into flats it was always possible that the alleged offence might be

under either section 95 or section 72 and it was open to the applicants to have included reference to section 72 in the original application but they did not do so.

Defences and quantum of RRO

46. In light of the decision that the tribunal does not have jurisdiction the tribunal does not make a decision on these issues.

Fees

47. The applicant applied for their fees of £300 paid to the tribunal in connection with the application and hearing be refunded by the respondent. The tribunal finds that in the circumstances it is not appropriate that the respondent should reimburse the applicants their fees of £300.

Name: Judge Pittaway

Date: 8 December 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where—
- (a) they are HMOs to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority—
- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
 - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.
- (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.

56 Designation of areas subject to additional licensing

- (1) A local housing authority may designate either -
- (a) the area of their district, or
 - (b) an area in their district,
- as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

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.

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.
- (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.

95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

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

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

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

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

(b) for failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to **[F1a fine]**.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Housing and Planning Act 2016

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 to that landlord.

| | <i>Act</i> | <i>section</i> | <i>general description of offence</i> |
|---|-----------------------------------|---------------------------|--|
| 1 | Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |
| 3 | Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4 | | section 32(1) | failure to comply with prohibition order etc |
| 5 | | section 72(1) | control or management of unlicensed HMO |
| 6 | | section 95(1) | control or management of unlicensed house |
| 7 | This Act | section 21 | breach of banning order |

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

41 Application for rent repayment order

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

- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
- (b) the offence was committed in the period of 12 months ending with the day on which the application is made”.

43 Making of a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.

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.

| | |
|---|--|
| <i>If the order is made on the ground that the landlord has committed</i> | <i>the amount must relate to rent paid by the tenant in respect of</i> |
|---|--|

| | |
|--|---|
| 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.