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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/HMF/2020/0235** **CVP Remote**
Property	**:**	**22 Fircroft Road, London SW17 7PS**
Applicants	**:**	**Sarah Ayton**
Representative	**:**	**In person**
Respondent	**:**	**Balazs Stalter**
Representative	**:**	**Non attendance**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mr Peter Roberts (Professional Member)**
Venue and date of hearing	**:**	**Video hearing on 29 July 2021**
Date of decision	**:**	**2 August 2021**

DECISION

Decision of the tribunal

(1) The tribunal finds that a rent repayment order be made in the sum set out below in favour of the applicant, the tribunal being satisfied beyond reasonable doubt that the respondent has committed an offence pursuant to s.72(1) of the Housing Act 2004, namely that a

person commits an offence if he or she is a person having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

(2) The amount of the rent repayment order is the sum of **£7020** for the rent paid for twelve months during the applicant's period of occupation.

(3) the tribunal determines that there be an order for the refund of the application fees in the sum of £300 pursuant to Rule 13(2) of the Tribunal Rules.

Reasons for the tribunal's decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **22 Fircroft Road, London SW17 7PS**. This property is a three-floored house in the London Borough of Wandsworth let as six rooms to multiple occupants on separate tenancy agreements expressed on the face of the documents to be tenancies giving a total of at least six occupants. The applicant says that "At all points of my living at the Property all 6 rooms were filled with only a short number of days between a tenant leaving and a replacement moving in." From the 4 June 2018 when the applicant commenced her tenancy, to 7 June 2020, the date when the applicant left the property, the applicant says the property was required to have a mandatory license.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

3. The hearing of the application took place on Thursday 29 July 2021. The applicant attended in person. The respondent did not appear and there was no representative present on his behalf. The Tribunal decided to proceed in his absence in accordance with Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) as the Tribunal was satisfied that the parties had been notified of the hearing or that reasonable steps had been taken to notify the parties of the hearing; and the Tribunal considered that it was in the interests of justice to proceed with the hearing. The Applicant was in attendance and was ready to proceed with her application.

4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

5. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video hearing Platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. The applicant produced documentary evidence to confirm that the respondent had downloaded a copy of her trial bundle that she served upon him in accordance with Directions issued by the Tribunal

6. The respondent is not the registered owner of the property as listed on its registered title. The applicant is the former occupant of one of the rooms in the property. The applicant signed a tenancy agreement in the form of a house share agreement with the respondent/ landlord who she understood had a letting agreement with the freehold owner. Accordingly, the freeholder had entered into an arrangement with the respondent allowing the respondent to control the property as an intermediate landlord. The Tribunal noted that the respondent failed to file and serve any evidence whatsoever, or even to respond to any correspondence from the Tribunal. The respondent did not in any way engage with the Tribunal process or indeed offer any explanation why this was so.

7. The meaning of a "person having control" and "person managing" is provided by s.263 of the Housing Act 2004:

> *"(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. "

8. The Tribunal was satisfied that the respondent was a person having control of the property as the rent paid by the applicant was paid directly to him.

Background and the law

9. An HMO (Housing in Multiple Occupation) is established when a minimum of 3 people in 2 households live together and are sharing amenities. There are a range of different types of accommodation that could be an HMO, depending on how many people are living there and what the living arrangements are. As a general rule, where there are three or more tenants in a property who make up more than one household with shared toilet, bathroom or kitchen facilities, this could be an HMO. An HMO where there are at least 5 tenants forming more than one household sharing the facilities mentioned above is generally licensable under the Mandatory Licensing scheme introduced by the Housing Act 2004 as is the case in this matter.

10. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the Tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that a person/company has committed an offence described in Part two of the Act and in that regard section 72 of the 2004 Act states: -

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.

11. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made on 1 November 2020. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

12. The total value of the application is the amount for the claimed rental sum set out above. The applicant also supplied to the Tribunal proof of payment of the rents and this was shown in the trial bundle by way of bank statements. The Tribunal were satisfied that these payments had indeed be made to the respondent.

13. It was noted from the trial bundle that the property was not listed as an HMO with a license in the local authority list of licensed properties in Wandsworth. A landlord who operates a licensable HMO without a licence commits an offence. Accordingly, there was no issue before the tribunal as to the need for or existence of a licence.

14. The property is potentially subject to a licensing scheme, the Mandatory Licensing Scheme. This is the scheme under the Housing Act 2004, defined at s.254 of that Act as applicable to all HMOs in which five occupants from more than one household share amenities. The scheme applies across England. A failure to licence a property as required by this scheme is an offence under s.72(1) of the Housing Act 2004. During her period of occupation, the property was required to be licensed under this scheme as it housed six occupants from more than one household. The applicant confirmed in her evidence that she shared the property with other persons, none of whom were members of the same household. The presence of six persons with separate households clearly meets the requirements of the Mandatory Licensing Scheme; the property was accordingly required to be licensed under this scheme.

The Offence

15. There being a house as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed. The respondent has therefore committed an offence under section 72 (1) of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property. The Tribunal relies upon the Upper Tribunal decision in the case of *Goldsbrough and Swart v CA Property Management Ltd and Gardner* [2019] UKUT 311(LC) in making this finding.

16. In the Upper Tribunal Judge Elizabeth Cooke found that where the alleged offence is controlling or managing an unlicensed HMO, an RRO can only be made against a landlord of the property in question. While a managing agent cannot be a landlord, she concluded that the

definition of a landlord, for the purposes of the 2016 Act, included both the tenants' immediate landlord and the freehold owners of the property, in circumstances where the freehold owners had granted a lease of the property to the tenants' immediate landlord, who then entered into tenancy agreements with the tenants. This is, the Tribunal believes, the situation that arose in this case and therefore the case applies thus enabling the Tribunal to make a decision that affects this respondent.

17. To assist I quote some details of Judge Cooke's decision: -

> *"31. I also agree that a managing agent that does not have a lease of the property cannot be a landlord. If that is what the government guidance, quoted at paragraph 23 above, is intended to say then it is correct. But if it is intended to say that an intermediate lessee, who is the landlord of the applicants but the sub-tenant of the freeholders (or indeed of another superior lessee) cannot be subject to an RRO than that would appear to be incorrect and misleading. It would be very helpful for that guidance to be clarified.*

18. However, in the Court of Appeal on 29 July 2021 in the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 it was decided " that section 40(2)(a) only enables an RRO to be made against an immediate landlord and not a superior landlord." This is not a problem in this case because it was clear in this case that the role of the respondent was one of landlord as he was expressed to be a lessor in the letting agreement entered into by the applicant in respect of one room at the property.

19. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application. There were no submissions or other evidence of a reasonable excuse for not having applied for a licence. Accordingly, the tribunal had no alternative other than to find that the respondent was guilty of the criminal offence contrary to the Housing Act 2004 being in control of an unlicensed property.

The tribunal's determination

20. The amount of the rent repayment order was extracted from the amount of rent paid by the applicants during the periods of occupancy as set out within the trial bundle where the rents actually paid were fully stated in a spreadsheet format. The amount is are set out in this decision at paragraph (2) above. These sums represent the maximum sum, (100%), that might form the amount of a rent repayment order being twelve months at £135 per week. This was the amount expressed

to be payable in the agreement entered into by the parties and dated 4 June 2018.

21. In deciding the amount of the rent repayment order, the Tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the Tribunal consider an appropriate order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view from evidence discussed below that the respondent was a professional landlord. The Tribunal was shown a decision issued by this Tribunal affecting the respondent regarding another property, 37 Longmead Road, Tooting, London SW17 8PN, (LON/00BJ/HBA/2020/0008), where the application was in relation to a banning order that in the end was not made by the Tribunal. However the Tribunal did note that the Tribunal did write that "*On 21 November 2019, at Lavender Hill Magistrates' Court, the Respondent was convicted of a prescribed offence under the Act, namely: on 26 February 2019, being in control or management of a house in multiple occupation, namely 37 Longmead Road, Tooting, London SW17 8PN ('the Property'), requiring a licence but that was not so licensed, contrary to section 72 Housing Act 2004. The Respondent was convicted after trial (after entering a 'not guilty' plea), and fined £1,858.00 (as well as ordered to pay a victim surcharge and costs)*".

22. As was stated in paragraph 26 of *Parker:-*

> "*Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.*"

23. Having said that, when considering the amount of a rent repayment order the starting point that the Tribunal is governed by is s.44(4), which states that that the Tribunal must "in particular, take into account" three express matters, namely:

(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.

The Tribunal must therefore consider the conduct of the parties and the financial circumstances of the respondent. Express matter (c) was therefore considered as such a conviction must apply so far as the respondent is concerned bearing in mind the conviction and fine set out above.

24. The Tribunal were also mindful of the recent Upper Tribunal decision in *Vadamalayan v Stewart and Others* [2020] UKUT 183 (LC). In particular Judge Elizabeth Cooke said: -

> *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.*
>
> *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.*
>
> *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. The appellant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the appellant's own obligations as landlord. The respondents as tenants were entitled to the items set out in the appellant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for*

example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the appellant spent in meeting one obligation from what he has to pay to meet the other.

54. The appellant also wants to deduct what he had to pay by way of mortgage payments to the TSB and interest on another loan which has not been shown to relate to the property. The FTT refused to deduct the mortgage payments because the mortgage was taken out in 2016 whereas the property was purchased in 2014, so that the mortgage did not appear to have funded the purchase. The appellant says that the property was bought some years before that and that this was a re-mortgage. He did not produce evidence about that to the FTT and he could have done so. More importantly, what a landlord pays by way of mortgage repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order. The other loan has not been shown to relate to the property and I regard it as irrelevant, as did the FTT.

25. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James*(2021) UKUT 0038 (LC) and *Awad v Hooley*(2021) UKUT 0055(LC). In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. He also noted that section 46(1) of the 2016 Act specifies particular circumstances in which the FTT must award 100% and must disregard the factors in section 44(4) in the absence of exceptional circumstances, and he expressed the view that a full assessment of the FTT's discretion ought to take section 46(1) into account. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

26. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4). Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and(c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

27. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order. The tribunal could not see any justification for a deduction for any outgoing. The conduct of the respondents did not seem to justify this allowance.

28. It has been observed that quantum of any award is not related to the profit of the Respondent, following *Vadamalayan*. The only expense deductions that may be allowed, at the discretion of the Tribunal, are for utilities paid on behalf of the tenants by the landlord. We take the view that council tax is a fixed cost of the landlord, also payable when the property is empty. It is not "consumed at a rate the tenant chooses" (*Vadamalayan*, §16), as per utilities and should not be an allowable expense. The Tribunal agrees with this assessment of the relevance of this outgoing. Details of other expenses were not submitted and in the absence any witness before the Tribunal to give evidence on behalf of the respondent, the Tribunal was unable to take into account these items.

29. The Tribunal then turned to the matter of the conduct of the parties. The landlord should have licenced this property but did not. This is a significant factor as the property should have been licenced and ignorance of the law/facts does not assist the respondent, he remains liable. Additionally, the respondent has been convicted of an offence relevant to this application and has been fined. These are very significant issues for the Tribunal to consider when deciding the amount of the award.

30. The applicant asserted that there was little if any fire prevention or alarm equipment at the property and there was only one battery operated smoke alarm There were also other issues about the fabric of the building such as her window not closing property and balusters missing on the staircase and a loose fanlight over the front door. The Tribunal took particular note of these failings with regard to an assessment of the conduct of the parties and in particular the respondent.

31. Furthermore, there was a distinct lack of engagement with the Tribunal on the part of the respondent. The failure of the respondent to comply with the directions of the Tribunal is aggravating conduct. The respondent has made no response at any stage in the process, despite repeated valid service of documents upon him.

32. Consequently, while the Tribunal started at the 100% level of the rent it thought that there were no reductions that might be appropriate, proportionate or indeed necessary to take account of the factors in the Act. Therefore, the Tribunal decided that there should be no reduction from the maximum figures set out above giving a final figure of 100% of

the claim. This figure represents the Tribunals overall view of the circumstances that determined the amount of the rent repayment order.

33. Consequently, the Tribunal concluded that the amount of the rent repayment order should be the sum of £7020, the tribunal being satisfied beyond reasonable doubt that the respondent had committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a person/company having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed.

34. Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No 1169 (L.8) does allow for the refund of Tribunal fees. Rule 13(2) states that: -

> "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*."

35. There is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate and proportionate in the light of the determinations set out above that the respondent refund the Applicants' Tribunal fee payments of £300.

36. In the circumstances the tribunal determines that there be an order for the refund of the Tribunal fees in the sum of £300 pursuant to Rule 13(2).

Name: Judge Professor Robert Abbey Date: 2 August 2021

Annex

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

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.

(8) 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.

(9) 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.

(10) 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).

s41 Housing and Planning Act 2016

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.

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)....
(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.