



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

**Case Reference** : **LON/00AN/HMF/2021/0304**

**HMCTS code  
(paper, video,  
audio)** : **V - Video**

**Property** : **273, Fulham Palace Road, London. SW6  
6TL**

**Applicants** : **(1) Mr. Daniel Naptali Jackson French  
(2) Ms. Elena-Adelina Astancai**

**Representative** : **Dr. R. Mohan of Legal Road Ltd.**

**Respondents** : **London State Ltd.**

**Representative** : **Mr. H. Talat - manager**

**Type of Application** : **Application for a rent repayment order by  
tenant**

**Tribunal** : **Tribunal Judge S.J. Walker  
Tribunal Member Mrs. L. Crane MCIEH**

**Date and Venue of  
Hearing** : **5 April 2022 – video hearing**

**Date of Decision** : **12 April 2022**

---

**DECISION**

---

- (1) The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the Applicants the sum of £7,020.**
- (2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbusement by the Respondent of the fees of**

**£300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.**

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

**Reasons**

**The Application**

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act").

**The Law**

2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. This list includes offences contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act"). An offence is committed under this section if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
4. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation. This case is concerned with an alleged failure to obtain an additional licence. The relevant designation in this case was made by the London Borough of Hammersmith and Fulham and applies to properties containing 3 or more people comprising 2 or more households.
5. In order to require a licence a property must also still be an HMO, which means that it must meet one of the tests set out in section 254 of the 2004 Act. These include the standard test under section 254(2).
6. A building meets the standard test if it;
  - (a) *consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
  - (b) *the living accommodation is occupied by persons who do not form a single household ...;*

- (c) *the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;*
  - (d) *their occupation of the living accommodation constitutes the only use of that accommodation;*
  - (e) *rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and*
  - (f) *two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."*
7. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed. This is the criminal standard of proof and is a high hurdle to overcome, though it does not require proof beyond any doubt at all.
  8. Section 72(4)(b) of the 2004 Act provides that it is a defence to a charge of an offence under section 72(1) if;
    - "an application for a licence has been duly made in respect of the house under section 63"*
  9. By section 63 an application must be made to the local housing authority and must be made in accordance with such requirements as the authority may specify. Those requirements may include the payment of a fee fixed by the local authority.
  10. It is also a defence to such a charge that a person had a reasonable excuse for committing it (section 72(5)).
  11. Section 41(2) of the Act states as follows;
    - "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.*
  12. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.
  13. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

14. Although an offence may be committed under section 72(1) of the 2004 Act by a number of people involved in the management and control of an HMO, a rent repayment order may only be made against the immediate landlord of a tenant to whom the housing was let at the time the offence was committed. This is made clear by the Court of Appeal's decision in the case of Rakusen -v- Jepsen and others [2021] EWCA 1150.

### **Procedural Background**

15. The application was made on 16 December 2021 and seeks payment for the period from 29 August 2020 to 28 August 2021, so it has been made in time.
16. The application was originally made against both the current Respondent and also Mr. Mohammad Shamsi, the freeholder of the property. However, the application against Mr. Shamsi was withdrawn by the Applicants in a letter from their representative to the Tribunal dated 21 March 2022.
17. Directions were issued by the Tribunal on 13 January 2022. Among other things, they required the parties to prepare bundles of documents on which they rely for use at the hearing.
18. The Tribunal received a bundle comprising an index and 207 numbered pages on behalf of the Applicants, including witness statements from the Applicants. It also received an un-numbered bundle of 12 pages from the Respondent, including a witness statement from Mr. Talat on their behalf. It also had before it a 3 page response to the Respondent's bundle from the Applicants and an annotated version of this response containing the Respondent's comments.
19. Page references throughout this decision are to the printed numbers appearing on the documents in the Applicant's bundle unless otherwise stated.

### **The Hearing**

20. The First Applicant attended the hearing by telephone and was represented by Dr. R. Mohan from a company known as Legal Road Ltd. The Respondent was represented by Mr. Talat who described himself in his witness statement and at the hearing as the back office manager of the Respondent and who confirmed that he was authorised to act on behalf of the Respondent.

### **The Applicants' Case**

21. The Applicants' case was a simple one. It was that throughout the period in respect of which an order was sought – 29 August 2020 to 28 August 2021 – the property was let to the Applicants by the Respondent. The rent for the property was £866.67 per month and this had been paid in full. They argued that the property was an HMO in that it comprised 5 separately let bedrooms together with a shared kitchen and 2 shared bathrooms. The property is in the London

Borough of Hammersmith and Fulham and a licence was required by virtue of the additional licensing scheme introduced by that Borough on 5 June 2017. Their case was that no licence was in place and that none had been applied for. They sought an order for a total of 12 months' rent, totalling £10,400.04.

22. In their statement of case and supporting documents no allegations were made about any misconduct on the part of the Respondent other than its failure to obtain or apply for an HMO licence.

### **The Respondent's Case**

23. In his evidence to the Tribunal Mr. Talat on behalf of the Respondent accepted the following;
- (a) the property is in the London Borough of Hammersmith and Fulham;
  - (b) that it comprised 5 rooms which were available for let separately, together with a shared kitchen and 2 shared bathrooms;
  - (c) that the London Borough of Hammersmith and Fulham had introduced an additional licensing designation which applied to the property for the period in question and which required any HMO with 3 or more occupants comprising 2 or more households to be licensed;
  - (d) that throughout the period in question the property was in fact occupied by 3 or more people in 2 or more households; and
  - (e) that the property is managed by the Respondent which is the sole landlord and is responsible for the collection of rent (see para 2 of Mr. Talat's witness statement).
24. The Respondent's case, as set out in Mr. Talat's witness statement, which is at the beginning of the Respondent's bundle, was that the Respondent had made an online application for a licence on 10 January 2020 (see para 6 of the witness statement) and that, therefore, the defence in section 72(4)(b) of the 2004 Act applied. They accepted that this application was never determined, and a further application was made, and a licence was granted on 18 November 2021 (page 12 of the Respondent's bundle).
25. In the alternative the Respondent argued that the rent paid by the Applicant's included payments in respect of utilities and the provision of cleaning and that a 25% reduction should be made from any order to reflect this (see para 13). They also argued that the starting point of the full rent should not be used. No allegations of misconduct by the Applicants was made.

### **The Tribunal's Findings and Conclusions**

#### **1. Has an offence been committed**

26. On the basis of the admissions made by Mr. Talat on behalf of the Respondent, together with the evidence of the Applicants, the Tribunal was satisfied so that it was sure of the following;

- (a) the property is in the London Borough of Hammersmith and Fulham;
  - (b) it comprised 5 rooms which were available for let separately, together with a shared kitchen and 2 shared bathrooms;
  - (c) one of those rooms was let to the Applicants throughout the period from 29 August 2020 to 28 August 2021 (see paras 1 to 5 of the witness statement of the First Applicant at pages 20 to 21);
  - (d) the London Borough of Hammersmith and Fulham had introduced an additional licensing designation which applied to the property for the period in question and which required any HMO with 3 or more occupants comprising 2 or more households to be licensed;
  - (e) throughout the period in question the property was in fact occupied by 3 or more people in 2 or more households; and
  - (f) the property is managed by the Respondent which is the sole landlord and is responsible for the collection of rent.
27. On the basis of the evidence provided by the London Borough of Hammersmith and Fulham, the Tribunal was satisfied that the application which led to the eventual grant of a licence was received by them on 29 September 2021 (see page 116) and that, therefore, no licence was in place before that date and this later licence application itself could provide no defence to the Respondent as the application was made after the period for which an order is sought.
28. The Tribunal then considered the Respondent's defence based on the making of an application in January 2020. It was not satisfied that such an application was made. The Tribunal reached that conclusion for the following reasons.
29. Firstly, no documentary evidence of any kind was produced to show that such an application was made. This was particularly surprising given that, in the course of his evidence, Mr. Talat referred to correspondence received from the local authority. He was asked if this made specific reference to the application in question, and he replied that it did. However, when asked why this letter had not been provided to the Tribunal, he said that as the letter only contained general advice about how to progress the application, he did not consider it to be relevant. The Tribunal found this explanation incredible. The whole basis of the Respondent's case was that an earlier application had been made. Any document which made reference to that application would be crucial to establishing their case. It is simply inconceivable that such an important document would not be produced if it in fact existed.
30. There were other significant weaknesses in the Respondent's evidence in this regard which the Tribunal found, overall, to be inconsistent and lacking in credibility. When asked how the application had been made Mr. Talat initially said that it may have been done by post – whereas his

witness statement said that it was done online. Later he said that there was first an attempted application online but an error message was received – which in the view of the Tribunal would show that no application had in fact been made – and that a second postal application was made on 10 January 2020. When asked if he had made the application himself, Mr. Talat replied that he had not. When asked who had made the application, he said that he did not know. He could provide no explanation for there being no witness statement from the person who it was claimed had in fact made the application. This was despite his evidence that he was the Respondent’s back-office manager and that he had day-to-day responsibility for managing the property. Initially he also said that the online application was made at the height of the pandemic, whereas his witness statement said that it was made in January 2020 well before any restrictions were imposed in this country.

31. Mr. Talat’s evidence about payment for the application was equally unconvincing. He said that no fee had been paid for the first application – the online application which had produced an error message. He was asked how the fee was paid for the postal application, and he said that a cheque was sent. When asked what proof there was that this cheque had cleared, he said that it had been returned by the local authority.
32. Taking the evidence as a whole, the Tribunal was not satisfied that the Respondent made any application for an HMO licence prior to that which was made on 29 September 2021 and referred to in correspondence from the local authority. It follows from this that the defence under section 72(4)(b) of the 2004 Act was not made out.
33. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not. Had the evidence suggested that the Respondent had been led to believe that a genuine application had been received by the local authority and was being processed, when in fact it was not, then perhaps an argument could have been made out. However, in this case the evidence simply did not show that. The Tribunal did not accept that the purported earlier applications were ever made. Mr. Talat’s evidence was that the Respondent is a company which trades as an estate agent and property manager, though this was the only property which it itself owned and let as a landlord. That being the case, the Tribunal could see no scope for any other reasonable excuse argument.
34. It therefore also follows that the Tribunal was satisfied so that it was sure that the Respondent had committed an offence under section 72(1) of the 2004 Act throughout the period in question. It had management and control of an unlicensed HMO.

**2. Is there jurisdiction to make an order**

35. Having concluded that a relevant offence had been committed the Tribunal further concluded that it had jurisdiction to make an order

against the Respondent. The tenancy agreement clearly showed that the Respondent was the Applicants' immediate landlord (see page 30) and it was admitted by Mr. Talat that the Respondent was the sole landlord and had management and control of the property.

**3. What is the maximum amount that can be ordered**

36. The evidence clearly showed that the Applicants were in occupation for the whole of the 12 month period in question, and so the Tribunal had jurisdiction to make an order in respect of that period. The evidence also showed that the monthly rent was £866.67. Proof of the payment of rent was provided in the form of the Second Applicant's bank statements at pages 33 to 45. There was, though, one slight anomaly in that the total payment made for the month of April 2021 was only £854.68, a shortfall of £11.99 – this is acknowledged at paragraph 5 of the First Applicant's witness statement (page 26). It follows that the maximum sum which the Tribunal could award was 12 times the monthly rent less this £11.99, making a total of £10,388.05.

**4. Should there be a reduction in the amount ordered**

37. The Respondent's first argument was that the amount of any order should be reduced to take account of payments for utilities and for cleaning. The tenancy agreement clearly stated;

*"The rent covers all the Bills (Electricity, Gas, Water, TV Licence, Internet, and Council Tax)"* (page 30)

However, it also stated;

*"Cleaning and cleaning supplies are provided is complimentary [sic] for communal use, you do not pay for this service"*

38. The First Applicant accepted that he made no payments in respect of utilities at the property. He explained that the property had gas central heating and a gas cooker and, although he was not sure himself, it appeared to the Tribunal likely that the hot water was also provided as part of the central heating.

39. On this basis the Tribunal accepted that a discount should be made in respect of the cost of the utilities provided, but that no discount should be made in respect of the cleaning costs.

40. The next question was how much that discount should be. The Applicants were unable to provide any evidence as to the cost of the utilities provided at the property. There was also no evidence as to the utility costs from the Respondent. Although he said that he was responsible for the day-to-day management of the property, Mr. Talat could give no indication of the costs incurred. However, he accepted that as there were 5 rooms in the building which could be let, it would be reasonable to divide the total cost of the utilities for the building by 5 to obtain the cost attributable to the Applicant's property.

41. During his submissions the Tribunal asked Dr. Mohan what he would consider to be an appropriate discount in respect of utilities, and he suggested a discount of 10%. This would amount to a charge of £86.66



per month for utilities in respect of the Applicant's property. Assuming the rents of the other rooms were at a similar level, this would equate to a utility cost of £433.30 per month for the building.

42. Using its knowledge of property management, the Tribunal considered this to be a reasonable figure and, in the absence of any better evidence from the Respondent, considered that no greater discount was appropriate.
43. The Tribunal therefore applied a discount of 10% to the monthly rent to reflect the cost of the utilities provided. It decided that the small shortfall in rent in April 2021 was of such little significance that it could be discounted, so concluded that the maximum sum payable once utilities were deducted was  $(£866.67 \times 12) \times 90\%$  which amounts to £9,360 when rounded to the nearest pound.
44. As explained above, there were no allegations from either side of bad conduct other than the fact that the offence was committed. The Respondent had no previous convictions. No evidence was provided as to the financial circumstances of the Respondent.
45. Mr. Talat's evidence, which the Tribunal accepted, was that the Respondent was in the estate agency and property management business. It had a portfolio of 6 properties of which 2 were HMOs, the rest being family houses. This, however, was the only property in which the company itself had a leasehold interest and in respect of which it acted as a landlord. The Tribunal concluded that the Respondent was operating a small-scale business and had limited experience as a landlord. It also bore in mind that an application for an HMO licence was made in September 2021 and that that application had been successful.
46. The Tribunal bore in mind the recent Upper Tribunal decision in the case of Williams -v- Parmar [2021] UKUT 244 in which it was made clear that the approach of using the maximum rent as a "starting point" is to take a too narrow view of the Tribunal's powers. In that case it was made clear that there was no presumption in favour of using the maximum rent, that factors other than those mentioned in section 44(4) of the Act may be considered, and that the Tribunal may order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness.
47. Dr. Mohan in his submissions suggested that a deduction of 20% would be appropriate to reflect the Respondent's conduct and previous good character.
48. The Tribunal bore in mind that, unlike in many other cases of this kind, there were no allegations in the Applicants' statement of case of any other failings by the landlord. It bore in mind the lack of previous convictions and the small-scale nature of the Respondent's business,

whilst at the same time bearing in mind the seriousness of offences of this kind.

49. Balancing all the arguments the Tribunal concluded that a discount of 25% from the sum of £9,360 was appropriate. This gives a figure of £7,020. The Tribunal therefore decided to make a rent repayment order for the benefit of the Applicants in the sum of £7,020.

**5. Fees and costs**

50. The Applicants also sought an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imburement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had succeeded in their application, it was just and equitable to make such an order.
51. Although the Applicants' application also sought the recovery of legal costs, this was not pursued at the hearing.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 8 April 2022

**ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

- (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–
  - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are–
  - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

**263 Meaning of “person having control” and “person managing” etc.**

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–
  - (a) receives (whether directly or through an agent or trustee) rents or other payments from–
    - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
    - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
  - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

**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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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***

<p>an offence mentioned in <a href="#">row 1 or 2 of the table in section 40(3)</a></p> <p>an offence mentioned in <a href="#">row 3, 4, 5, 6 or 7 of the table in section 40(3)</a></p>	<p>the period of 12 months ending with the date of the offence</p> <p>a period, not exceeding 12 months, during which the landlord was committing the offence</p>
--	---

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
  - (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
  - (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

**Section 52 Interpretation of Chapter**

- (1) In this Chapter—
  - “offence to which this Chapter applies” has the meaning given by section 40;

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

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

“rent repayment order” has the meaning given by section 40.

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