FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AY/HMF/2021/0024**
HMCTS code	**:**	**Video VHS**
Property	**:**	**6 Kimberley Road, London SW9 9DG**
Applicant	**:**	**Mr D Fowler**
Representative	**:**	**In person**
Respondent	**:**	**Mrs M Camenzuli**
Representative	**:**	**Ms P Holroyd of counsel**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mr T Sennett MA FCIEH**
Date and venue of Hearing	**:**	**3 December 2021** **Remote**
Date of Decision	**:**	**13 January 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video using VHS. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

Orders

(1) The Tribunal makes a rent repayment order against the Respondent in the sum of £6,587.

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2), that the Respondent reimburse the Applicant his application and hearing fees (£300).

The application

1. On 19 January 2021, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 22 March 2021, providing for a hearing on 9 July 2021.

2. We were provided with more than one bundle by each party, and a short video film by the Applicant. We have take account of all of the written material provided.

The hearing

Introductory

3. There had been a number of delays in listing the application, the details of which need not be rehearsed here. The Applicant appeared in person. The Respondent was represented by Ms Holroyd of counsel. The Respondent is elderly and somewhat frail. Ms Holroyd told us that her son, Mr Stephen Camenzuli, acted in general as her agent in respect of the letting of the property, and any evidence should be from him rather than Ms Camenzuli (a fact also evident from the Respondent's witness statement). Mr Camenzuli and his mother were not able to join the hearing by video. Ms Holroyd explained that he was unfamiliar with computers and could only join by telephone. The Applicant did not object to his participation by telephone, and expressed the view that he would rather the case was heard on the day, rather than, for instance, arrangements being made for Mr Camenzuli to join by video from his solicitor's office.

4. We agreed that the Respondent herself need not take further part in the proceedings via the telephone link with Mr Camenzuli, again with the agreement of the Applicant.

5. The Applicant applied for an RRO for £9,880 in respect of rent paid between 21 March 2019 and 21 March 2020.

The alleged criminal offence: the law

6. The Applicant alleges that the Respondent committed the offence contrary to Housing Act 2004 ("the 2004 Act"), section 72(1), of having control or management of an HMO without a licence. By section 40(3) of the 2016 Act, that offence is one to which Part 2, chapter 4 of the 2016 Act applies. Chapter 4 gives the Tribunal the jurisdiction to make RROs. The text of section 72(1) of the 2004 Act and the relevant provisions of the 2016 Act are set out in the appendix to this decision.

7. As a result of the combined effects of sections 254 and the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, article 4 (made under section 55(3) of the 2004 Act), a property requires a licence if is occupied by five or more persons living in two or more separate households; and it falls within the "standard test" in section 254(2) of the 2004 Act, or "the converted building test" in section 254(4) (the "self-contained flat" test is not relevant to the current case).

8. The standard test applies to a building if

> "(a) it 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 … ;
> (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."

9. The converted building test applies to a building, or a part of a building, if

> "(a) it is a converted building;
> (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household … ;
(d) the living accommodation is occupied by those persons as their only or main residence … ;
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation."

10. "Self-contained flat" is defined in section 254(8) as

> "… a separate set of premises …
> (a) which forms part of a building;
> (b) either the whole or a material part of which lies above or below some part of the building; and
> (c) in which all three basic amenities are available for the exclusive use of its occupants."

11. The same subsection defines "converted building" as

> "a building or part of a building consisting of living accommodation in which one or more units of living accommodation has been created since the building or part was constructed".

12. One of the conditions for a tenant to apply for an RRO is that "the offence relates to housing that, at the time of the offence, was let to the tenant" (section 41(2)(a), 2016 Act – see below for full text).

The alleged criminal offence: the evidence

13. It was the Applicant's case that the property as a whole constituted an HMO, and was not licenced. The Respondent's case was that the property as a whole was divided into two self-contained units. Those were the Applicant's self-contained flat, and the remainder of the house, which was let on an assured shorthold tenancy to two other tenants, named as Serena and Francesca Di Giacomo. An HMO licence was therefore not necessary.

14. There was no dispute that the Applicant lived in a self-contained studio flat at the top of the house under an assured shorthold tenancy dated 26 March 2016, initially for six months. He was occupying under the statutory periodic tenancy thereafter.

15. It was similarly not contested that the Respondent did not have an HMO licence during the relevant period, although it is now licenced.

16. The Applicant had not provided a formal witness statement. We ordered that his application statements should stand as his evidence in chief, without objection from the Respondent.

17. The Applicant had rented the studio flat for four years, at a rent of £190 per week, throughout. The rent was paid in cash every week. Mr Camenzuli collected the rent in person, and made entries in a rent book (the contents of which, for the period claimed, were exhibited in the Applicant's bundle).

18. The studio flat consisted of an attic room, which included a small kitchenette, with a separate bathroom and WC. It was solely for the use of the Applicant. The flat had its own locked entrance door at the bottom of a flight of stairs. That door was accessed from the upstairs hall of the main body of the house below the flat.

19. The Applicant said that he had exclusive use of the facilities in the flat, but that he did also use the other facilities in the house when it was convenient to do so.

20. The Applicant said that, during his time there, Mr Camenzuli collected the rent individually from each room in the main house. He was aware of this because he could hear Mr Camenzuli doing so on Saturday mornings.

21. There were six separate rooms in the main body of the house. The Applicant did not know the other occupiers personally, but was aware of some of their names or identities. There was a partial account of who he said occupied each room in the Applicant's bundle, as follows (using the room numbers that the Applicant applied to the rooms in the house, which he also gave locations for):

    Room 1: Initially a couple, then a woman who worked at a nearby hair salon.

    Room 2: a young male in the first months, then "changed occupier frequently.

    Room 3: initially unoccupied. This room is shown with a lock in the video. It was described as a reception room by Mr Camenzuli.

    Room 4: Serena Di Giacomo

    Room 5: A young male at the start of his tenancy and two young women at the end.

    Room 6: A young man called Luke for most if not all of the Applicant's tenancy.

22. In oral evidence, the Applicant mentioned the surname Dingly (rendered phonetically here) for the man called Luke, who he had had some interaction with. He (Luke) had said he was Maltese, as the

Respondent and her son are. The Applicant also mentioned two Arab-looking men occupying other rooms during the latter period of his occupation.

23. He had more specific knowledge of Serena Di Giacomo, and had been in her room. He had never heard of Francesca Di Giacomo, nor a brother of Ms Di Giacomo.

24. Ms Holroyd asked the Applicant if he accepted that there had been a tenancy agreement in the names of the Di Giacomo sisters. He said that he agreed that an agreement had been created. When asked if he had any evidence that it was not a true agreement, he said he did not.

25. In answer to questions from the Tribunal, the Applicant related that he had originally answered an advertisement for a ground floor room at the house, and had viewed that room in the main body of the house, being shown round by Mr Camenzuli. There was also a woman potential tenant there, and it was she who took the room rather than him, while he took the attic flat. When he came to give oral evidence, Mr Camenzuli said he had no memory of this occurring.

26. The Applicant produced a video, taken, he said, two days before he moved out. It appears to be a smart phone video. The short video shows three rooms on the ground floor, each with a yale lock, and a bathroom. An open door leads down some steps to a kitchen and a WC. The video then moves up a flight to stairs to show another room with a yale lock, and a shower room and WC, to the door of which is a sign screwed saying "WC". Up a further short flight of three or four stairs are another two rooms with yale locks, and the door (with a yale lock) opening to the stairs to the Applicant's flat. The Applicant argued that the yale locks showed that each of those rooms was separately let as part of an HMO.

27. The evidence for the Respondent was in part contained in a witness statement from her personally, but that statement relied almost entirely on information she said came from Mr Camenzuli.

28. That evidence was that the main body of the house had been let to the two sisters, Serena and Francesca Di Giacomo, for occupation by them and their brother. He produced an assured shorthold tenancy agreement specifying the tenants as the sisters, dated 7 January 2016, for a fixed term of 12 months. The rent was £500 a week. Those tenants had held over under the statutory periodic tenancy since then.

29. The studio flat had been formed by Mr Camenzuli from what had previously been an attic space in 2010.

30. Mr Camenzuli contacted the council following the change in the definition of an HMO requiring a mandatory licence in 2018, and was told that a licence was not required, specifically because "as there was a separate self-contained studio flat, which had established use as it had been constructed for more than 4 years … and that the rest of the house had one family unit in the house" (Mrs Camenzuli's witness statement of 21 October 2021). Mr Camenzuli applied for the HMO licence in May 2020 (shortly after the Applicant left), as he wanted the option of using the property as an HMO, which would be more lucrative. The licence he holds now covers the whole building, described as comprising seven rooms, and is for occupation by eight people. In his oral evidence, Mr Camenzuli said that the decision to seek an HMO licence was precipitated by Serena Di Giacomo leaving.

31. He agreed the doors had locks on. He said that the doors predated the letting to the Di Giacomos, and were left as they were to save money. He also maintained that they were fire doors and therefore (he asserted) required to be kept locked.

32. Mr Camenzuli was not able to throw any light on the identity or name of the Di Giacomo brother. He also seemed to be unaware of who Francesca Di Giacomo was, in the sense of having met her and knowing what she looked like. At one point he said that he had assumed that she and Serena were sisters because they shared the same surname.

33. Our impression of the Applicant was that he was a reasonably straightforward witness, who seemed to us to be seeking to give honest evidence. He volunteered caveats to the certainty of his knowledge, for instance, and did not seem to us to be embroidering his evidence. The evidence in relation to his initial viewing of the downstairs room came out as a result of questions from the Tribunal, rather than being disclosed in advance. He did not appear to appreciate its possible significance.

34. We make due allowances for the fact that Mr Camenzuli was giving evidence by telephone, which has significant disadvantages compared to use of the video facility of the platform. Nonetheless, he seemed to us at times to be somewhat evasive. At others, he evidenced certainty about matters that were clearly wrong – in particular, as Ms Holroyd correctly acknowledged in her closing submissions, of course there is no rule that fire doors must be locked at all times. In respect of one issue (the state of the flat on leaving, which we refer to below), he acknowledged a falsehood in the documentary evidence he submitted.

The alleged criminal offence: determination

35. The Applicant is a litigant in person, and understandably did not make detailed submissions as to the legal basis of the application.

36. We should indicate first that we conclude that the Applicant was living in a "self-contained flat" for the purposes of section 254 of the 2004 Act. Whether in fact he sometimes used facilities elsewhere in the house is immaterial to that decision. The definition of "self-contained flat" only requires that the three basic amenities (a toilet, personal washing facilities and cooking facilities – section 254(8)) are available for his exclusive use, and he accepted that the facilities in the studio flat were exclusively for him. That he might have used facilities elsewhere as well does not matter.

37. Accordingly, the Applicant cannot secure an RRO under the standard test. We have set out the legislation above. The first requirement under the standard test requires that the building or part of a building which constitutes an HMO consists of units of living accommodation not consisting of a self-contained flat. Since the requirement can apply to part of the building, it would be possible for the rest of the house to amount to an HMO under the standard test, but in that event, the Applicant could not apply for an RRO, because his tenancy of the separate self-contained flat would not "relate" to the housing relevant to the criminal offence (section 41(2)(a), 2016 Act).

38. The question therefore is whether the property could be an HMO under the converted building test. We are not aware of any case law directly related to this test.

39. Regardless of the policy purpose of the converted building test, we conclude that the fact that Mr Camenzuli converted an attic space to a self-contained flat in 2010 means that it is a "converted building" within the meaning of the section. By creating the flat, Mr Camenzuli has created a unit of living accommodation after the building was constructed.

40. For the house as a whole to be an HMO, the other relevant criteria are that it should (as a whole, including the self-contained flat) have five occupiers (the 2018 Order), that it contains living accommodation which does not consist of a self-contained flat, and that occupiers of that living accommodation do not form a single household (the test in section 254(4)).

41. We do not have to decide on the facts of this case whether the distinct requirements in the Order and in the section 254 test for more than one household are cumulative or not, as will become evident.

42. There is no separate requirement for the sharing of amenities in the non-self-contained flat living accommodation, but again the implications need not detain us in coming to a decision in relation to this case. It may be that it is the fact of sharing amenities plus more than one household that makes accommodation fall into the definition of accommodation that is not a self-contained flat.

43. The Respondent's case is that the building was not an HMO for two reasons. First, because only four people were living there – the Applicant and the three Di Giacomos. Secondly, because the Di Giacomos, as siblings, were a single household (section 258 of the 2004 Act).

44. Whether these criteria are made out – five or more occupants; two households in the main body of the house – depends on the same factual finding. We must decide if we are satisfied that there were four or more occupants of the main part of the house. The only candidates for occupiers other than the Di Giacomos would necessarily have constituted a separate household. We must be sure beyond a reasonable doubt as to the commission of an offence, and in the context of this case that requires that we be sure to that standard as to this issue.

45. We do not doubt that the assured shorthold tenancy produced in respect of the main body of the house was genuine, in the sense that someone had signed it, or rather, two people, as tenants, and there was no reason to doubt the date. Further, there is agreement that Serena Di Giacomo occupied at least a room in the main body of the house during – it appears – all of the period of Applicant's occupation.

46. However, we do not believe that either Francesca Di Giacomo or a brother were in occupation. Not only did the Applicant deny it, but Mr Camenzuli himself was entirely vague as to the identity of either of them. This was in marked contrast to the way he spoke about Serena (as did the Applicant). It is not credible that Serena Di Giacomo was solely in occupation of the main body of the house, at a rent of £500 per week. That is strongly suggestive that there were other, no-household occupants.

47. It is not contested that Mr Camenzuli collected the rent from the Applicant every Saturday in person and in cash, and filled in a rent book. Ms Holroyd sought to throw doubt on whether the Applicant could be sure that Mr Camenzuli did likewise in relation to other rooms, and it is true that the Applicant did not overstate how he acquired this knowledge. Nonetheless, we think it at least more likely than not that the Applicant did hear activity that suggested that Mr Camenzuli was doing so. We also note that no attempt was made to indicate that the rent for the main body of the house was received in any other way.

48. We find the video of assistance. It shows physical features typical of a house occupied by a number of unrelated people living in separate lockable rooms and sharing washing and lavatory facilities and a kitchen. It did not look like the interior of a single property occupied by a related household.

49. Our conclusion is fortified by the Applicant's account of his first viewing, which we believe. That was, on his account, shortly before he signed the assured shorthold tenancy for the studio flat, which in turn was two and a half months after the signing of the Di Giacomo assured shorthold. The Applicant's account was of Mr Camenzuli showing two potential tenants a single room, at a single room rent, in a shared house. The credibility of this account is if anything enhanced by the fact that the Applicant did not appear to appreciate its significance.

50. Finally, and more generally, if we are to believe the Respondent's case, we would have to dismiss everything the Applicant said about other occupants (save for the presence of Serena Di Giacomo) as lies. This seems to us overwhelmingly unlikely. We rely for that conclusion on both our impression of the Applicant's evidence and on the inherent likelihoods, given the other factors we have indicated.

51. Taking the evidence together and as a whole, we are sure beyond a reasonable doubt that the Applicant's account of the occupation of the main part of the house is, at least broadly, accurate, and that therefore there were four or more people living in that part of the house and they constituted more than one household.

52. As a result, we find that the building was an HMO on the basis of the converted house test.

53. Mr Camenzuli's evidence of his conversation with someone at the local authority raised the issue of whether there was a defence of reasonable excuse for not having a licence under section 72(5) of the 2004 Act available to the Respondent.

54. We do not think it is, however, capable of amounting to the defence. The advice he says that he received – that he did not need a licence – was posited on the truth of his account to the official. He said he told the official that the property comprised a self-contained attic flat and the rest of the house was occupied by members of a single household under another assured shorthold tenancy. We have found as a fact that that was not true. The Respondent cannot rely on a false representation procuring a statement amounting to a reasonable excuse.

55. Accordingly, we find that the Respondent was guilty of the offence in section 72(1) of the 2004 Act. In those circumstances, we consider it appropriate to make an RRO.

The amount of the RRO

56. By section 44(2) of the 2016 Act, the maximum RRO that we can order is limited to the sum of the rent paid by the Applicant for a period not exceeding 12 months during which the Respondent was committing the

offence. The application is for that maximum, about which there was no dispute.

57. In determining the amount of an order within that maximum, the Tribunal must in particular take account of (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has ever been convicted of a relevant offence: section 44(4). Neither (b) nor (c) were relevant in this case.

58. In some cases, the Tribunal is required to adjudicate on lengthy submissions from both parties alleging poor conduct on the part of the other. With the exception of one matter, neither party sought to do so extensively in this case. The Applicant made limited and unparticularised allegations about fire safety and similar matters in this written application, but did not dwell on them in oral evidence or submissions.

59. The Applicant did cross-examine Mr Camenzuli on what works were necessary to secure the licence now in place. Mr Camenzuli said there were no major works. The property was cleaned, painted, there were some changes in furniture and some plumbing – he referred to installing some sinks. There was also some unspecified electrical work.

60. As to the respondent, there was really only one attack on the conduct of the Applicant. In her second statement, the Respondent produced photographs, stating that her son told her that they represented the state of the studio flat when the Applicant left. The photographs do show an extreme level of mess, with takeaway boxes and other detritus over much of the room, to a significant depth.

61. However, after cross-examination of both witnesses, and some questioning by the Tribunal, the position in relation to this mess became clear. In fact, the mess occurred before the Applicant left, in February 2020. He said that he was going through a difficult time then, as a result of which the situation occurred. At that time, Mr Camenzuli offered to help the Applicant clear it up, out of concern for the Applicant's state of mind. The Applicant acknowledged that he did make the offer, to be helpful, but did not call on Mr Camenzuli, as he considered that it was his own responsibility to clear up the mess, which he did. Mr Camenzuli agreed this account, and expressly stated in oral evidence that the photographs did not show the state of the flat when the Applicant left.

62. On the one hand, as we indicate above, this episode goes to undermine the credibility of Mr Camenzuli as a witness. It is true that the witness statement was actually made by his mother, but she attributes the photographs and the information about them to Mr Camenzuli. It is entirely clear that Mr Camenzuli acted as his mother's agent

throughout. In oral evidence, he admitted that what was said in the witness statement was false.

63. On the other hand, the interaction that really took place shows Mr Camenzuli's conduct towards the Applicant in a rather positive light. Further, the Applicant himself said that, during the tenancy, he found Mr Camenzuli generally helpful and responsive when things needed doing, and remarked on his friendliness.

64. The upshot is that, in considering the conduct of the parties, we take the view that there is really nothing of any great significance to hold against either of them.

65. There have been a number of important cases on the assessment of the amount of an RRO. The leading case is now *Williams v Parmar and Others* [2021] UKUT 244 (LC). In that case, the Upper Tribunal discusses the general approach to assessment, and the relevance of the maximum amount of an order, at paragraphs [23] to [26]. The passage concludes that there is no presumption that the maximum should be the "starting point" for considering the assessment of the amount of an RRO. The decision goes on to emphasise the width of the discretion available to the Tribunal in making the assessment. At paragraph [43], the Upper Tribunal refers to considerations advanced in another context (guidance as to when local authorities should themselves apply for RROs), and notes their general relevance. Those factors are

> "the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending."

66. These factors will "generally justify an order for repayment of at least a substantial part of the rent": [51] Insofar as this provides a bottom-end starting point for reductions, we know that even if significant reductions are appropriate, an RRO should still be "substantial".

67. The Upper Tribunal went on to determining the appropriate reduction from the maximum in that case by referring to a number of features of that case.

68. We are bound to say that, in coming to a conclusion on a case where the required matters to which we must have regard are evenly balanced in a rather neutral sense, and there is little assistance in the sorts of other factors that the Upper Tribunal took into account (cf paragraph 52), we are left with comparatively little guidance. Perhaps the most we can say is that a larger reduction from the maximum that the Upper Tribunal made in *Parmar* would be appropriate, given the significantly worse state of the building and the conduct of the landlord (eg in relation to the subsequent seeking of a licence) in that case. There, in respect of

most of the Applicants, the reduction was 20%, and 10% in respect of one Applicant particularly affected by poor conditions.

69. Taking these considerations into account, and recognising that we have a wide discretion, we consider that a reduction of a third from the maximum possible RRO is appropriate, and we so order.

Application for reimbursement of fees

70. The Applicant applies for the reimbursement of his application and hearing fees under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2). The application for the RRO was properly made and successful, and we so order. The Respondent must pay the Applicant £300, in addition to the RRO

Rights of appeal

71. 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 London regional office.

72. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

73. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

74. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 13 January 2022

Appendix of Relevant Legislation

Housing Act 2004

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.

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 and 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.

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

	Act	*section*	*general description of offence*
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.

(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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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.

(3) The amount of a rent repayment order under this section is to be determined 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).

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 this table.

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed –

(a) the rent 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.