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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BB/HMB/2022/0003**
Property	:	**174 Upton Lane, London E7 9NN.**
Applicants	:	**Md. Abu Yusuf.**
Representative	:	**In person.**
Respondent	:	**Imtiaz Khan (1)** **Rukon (2)**
Representative	:	**Afaque Solangi; Trainee Solicitor.**
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 Trevor Sennett MA FCIEH (Professional Member)**
Venue and date of hearing	:	**By a video hearing on 8 August 2022**
Date of decision	:	**10 August 2022**

DECISION

<u>Decision of the tribunal</u>

(1) The Tribunal determines 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 of the Housing Act 2004, namely that 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 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) In addition, the applicant asserts that the landlord breached S.1 of the Protection from Eviction Act 1977 by illegally evicting him whilst he was away from the property. Secondly, the tribunal finds that a rent repayment order be made in favour of the applicant, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.40 of the Housing and Planning Act 2016. This section confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this section applies. A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in a table in the Act found in this section and that is committed by a landlord in relation to housing in England let by that landlord. The first two lines of the table list as follows the following two offences: -

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) The applicant seeks a rent repayment order based on these two offences

(4) The total net amount of the rent repayment order is **£2825** for the rent paid by the applicant to the respondent.

Reasons for the tribunal's decision

Introduction

1. The applicants 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 the **174 Upton Lane, London E7 9NN**. The tenant seeks a Rent Repayment Order (RRO) for the total sum of £5450 (12 months at £450 per month but with the first month at £250). This appears to cover part of the duration of the tenancy of the Property. This property is a rear double room on the first floor of a converted house in the London Borough of Newham arranged as six letting rooms with shared kitchen and bathing facilities. In addition, the applicant asserts that the landlord breached S.1 of the Protection from Eviction Act 1977 by illegally evicting him whilst he was away from the property.

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 Monday 8 August 2022 by a video hearing with the applicant attending personally and the respondent represented by Mr. Solangi.

4. Both parties provided extensive trial bundles to assist the Tribunal at the time of the hearing. These bundles consisted of copy deeds documents, an assured shorthold tenancy agreement for the room, email letters and other relevant copy documents relating to this dispute.

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

6. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE – used for a hearing that is held entirely on the Ministry of Justice CVP 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. Therefore, the tribunal had before it electronic/digital trial bundles of documents prepared by the applicants and the respondent, both in accordance with previous directions.

<u>Background and the law</u>

7. 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.*
>
> *(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

8. The meaning of a "person having control" and "person managing" is provided by s.263 of the Housing Act 2004. "Person managing" is defined at subsection (3) as:

"[...] the person who, being an owner or lessee of the premises —

receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of an HMO, persons who are in occupation as tenants or licensee of parts of the premises;

(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;

would so receive those rents or other payments but for having entered into an arrangement [...] 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."

9. 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 2 March 2022. 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.

10. The tenant originally claimed an RRO for the total sum of £5450. The applicant supplied to the Tribunal proof of payment shown in the trial

bundle. The Tribunal were satisfied that these payments had indeed been made. However, the applicant admitted to rent arrears of £725.

The Offence

11. It was noted and confirmed by email that a license in respect of the property had been applied for on behalf of the respondent on 11 November 2020 and subsequently granted by Newham Council. Therefore, the property was unlicensed prior to that date. The property is situated within a licensing area as designated by the London Borough of Newham and has been subject to the mandatory licensing regime applicable to houses in multiple occupation occupied by 5 or more persons forming 2 or more households since 1st October 2018. In fact, at the hearing the respondent conceded and admitted that he had not applied for a license until 11 November 2020.

12. 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 of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property.

13. 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 at the start of the claim period and not until the application was made on 11 November 2020. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application.

14. 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 the landlord has committed an offence described in section 40 of the Act and in that regard section 6 of the Criminal Law Act 1977 states

> *6 Violence for securing entry.*
>
> *(1)Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—*
>
> *(a)there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and*

(b)the person using or threatening the violence knows that that is the case.

(4)It is immaterial for the purposes of this section—

(a)whether the violence in question is directed against the person or against property; and

(b)whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

Similarly, section 1 of the Protection From Eviction Act 1977 provides that: -

1 Unlawful eviction and harassment of occupier.

(1)In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3)If any person with intent to cause the residential occupier of any premises—

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A)Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a)he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

15. At the hearing the respondent admitted he had not issued a notice to terminate the tenancy of the applicant in the prescribed form or at all. He also admitted that he entered the room whilst let to the tenant without lawful authority and relet the room without properly terminating the applicant's tenancy. By his own admissions therefore the respondent landlord had breached S.1 of the Protection from Eviction Act 1977 by illegally evicting the applicant whilst he was away from the property.

16. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the unlawful eviction but came to the inescapable conclusion that no proper notice to quit had been issued, no Court application had been made for possession of the property and the room had been subsequently relet. Therefore, the Tribunal concluded that there had indeed been an unlawful eviction.

<u>The tribunal's determination</u>

17. The Tribunal then turned to quantifying the amount of the RRO. The amount of the RRO was extracted from the amount of rent paid by the applicant during the periods of occupancy as set out within the trial bundle. With regard to the RRO for the unlicensed HMO this is limited to the period up to the date of the application for the licence. However, the claim for the other ground regarding the unlawful eviction extends beyond that date until the end of the claim period.

18. In deciding the amount of the rent repayment order, the Tribunal was at the outset 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 that the respondent was not a professional landlord as he said he only owned this one property. However, he had been a landlord for over 5 years and so should have been aware of the legal requirements of licensing.

19. 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 not considered as no such convictions apply so far as the respondent is concerned.

20. The Tribunal were 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.

21. 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.

22. The Tribunal were mindful of another recent Upper Tribunal decision in *Williams v Kishan Parmar and Others* [2021] UKUT 244 (LC). In particular The Chamber President Mr Justice Fancourt said: -

> *6. In this regard, I agree with the observations of the Deputy President of the Lands Tribunal, Judge Martin Rodger QC, in Ficcara v James. [2021] UKUT 0038 (LC), in which he explained the effect of the Tribunal's earlier decision in Vadamalayan v Stewart [2020] UKUT 0183 (LC). Vadamalayan is authority for the proposition that an RRO is not to be limited to the amount of the landlord's profit obtained by the unlawful activity during the period in question. It is not authority for the proposition that the maximum amount of rent is to be ordered under an RRO subject only to limited adjustment for the factors specified in s. 44(4).*
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> *43. Mr Colbey argued that the FTT was wrong to regard the amount of rent paid as any kind of starting point and that the orders should have been made on the basis of what amount was reasonable in each case. He relied on guidance to local authorities issued under Chapter 3 of Part 2 of the 2016 Act, entitled "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017. Notably, this is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being 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. Although those are identified in connection with the question whether a local authority should take proceedings, they are factors that clearly underlie Chapter 4 of Part 2 of the 2016 Act generally.*
>
> *50 I reject the argument of Mr Colbey that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal*

should also take into account any other factors that appear to be relevant.

51. It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case. On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent. This is what Judge Cooke meant when she said in Vadamalayan that the provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act, which included expressly a criterion of reasonableness. If Parliament had intended reasonableness to be the criterion under Chapter 4 of Part 2 of the 2016 Act it would have said so.

23. So, *Williams v Parmar* provides us with clear guidance regarding the approach to quantum, to the amount of the potential RRO. First there is no presumption that the RRO should equate to 100% of the rent paid during the relevant period. In some cases, the amount of the RRO will be less than the rent paid. Secondly, the calculation of the amount of the order must "relate to" that maximum amount, so there is a need to identify the maximum possible award and thirdly, the Tribunal must then decide what proportion of the maximum amount of rent paid in the relevant period should be ordered to be repaid, in all the circumstances, bearing in mind the s.44(4) factors i.e. conduct of the landlord and tenant; financial circumstances of the landlord; and whether the landlord has at any time been convicted of a relevant offence.

24. In *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke wrote that

"The circumstances of the present case are a good example of why conduct within the landlord and tenant relationship is relevant; it would offend any sense of justice for a tenant to be in persistent arrears of rent over an extended period and then to choose the one period where she did make some regular payments – albeit never actually clearing the arrears – and be awarded a repayment of all or most of what she paid in that period. ".

Therefore, the Tribunal took this as another factor to be mindful of when calculating the amount of the RRO.

25. The Tribunal was mindful of the fact that 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 and (b) the financial circumstances of the landlord. We will take these in turn.

26. 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. So far as the financial position of the respondent is concerned, the Tribunal was not provided with sufficient material to enable it to make an informed decision in this regard.

27. Finally, we turn to the conduct of the parties. In that regard the Tribunal took the view that the primary duty of the tenant is to pay rent and the primary duty of the landlord is to provide a decent, dry, safe and easily habitable property for the tenant to quietly enjoy. The Tribunal noted that there were rent arrears. The landlord claimed these amounted to £1200 but when asked to explain this amount he sought to rely upon a handwritten calculation in the Trial Bundle that amounted to an odd document that did not explain how that total was arrived at. However, the tenant did concede that there were rent arrears of £725. The Tribunal accepted this sum as the level of arrears. The Tribunal considered that this sum should be deducted from the claim.

28. Similarly, the applicant confirmed that he had been in receipt of Universal Credit during the period of the claim. He conceded that the total amount of Universal Credit paid to him between 5 August 2020 to 31 December 2020 amounted to £1900. The Tribunal accepted this sum as the level of Universal Credit payments to the applicant. The Tribunal considered that this sum should be deducted from the claim.

29. The landlord should have licenced this property but did not. This is a significant factor in relation to the matter of conduct. It remains the case that this property should have been licenced and regrettably it was not. Therefore, the Tribunal accepts that this aspect of the conduct of the parties should be taken into account when considering the amount or level of the rent repayment order necessary in this case.

30. 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 so far as the respondent is concerned.

31. So far as the applicant is concerned, the Tribunal decided to reduce the RRO by £2625 to take into account the rent arrears and Universal Credit payments giving a final RRO figure of £2825. This figure represents the Tribunals overall view of the circumstances that determined the amount of the rent repayment order. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £2825 after the above deductions. The order arises as a consequence of the Tribunal being satisfied beyond reasonable doubt that the respondents 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 and because of the breach of section 1 of the Protection From Eviction Act 1977.

Name:	Judge Professor Robert Abbey	Date:	10 August 2022

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

95 Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
(2)A person commits an offence if—
(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
(b)he fails to comply with any condition of the licence.
(3)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
(a)a notification had been duly given in respect of the house under section 62(1) or 86(1), or
(b)an application for a licence had been duly made in respect of the house under section 87,
and that notification or application was still effective (see subsection (7)).
(4)In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—
(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or
(b)for failing to comply with the condition,
as the case may be.
(5)A person who commits an offence under subsection (1) is liable on summary conviction to a fine .
(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
(6A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
(6B)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct
(7)For the purposes of subsection (3) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—
(a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
(b)if they have decided not to do so, one of the conditions set out in subsection (8) is met.
(8)The conditions are—
(a)that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
(b)that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

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

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.