



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

Case Reference : **LON/00AC/HMG/2022/0016**

Property : **3 Colindeep Gardens, West Hendon
London NW4 4RU**

Applicant : **1 Clara Feige Vila Moreira
2 Zachary Ganny Adeola Gbadebo
3 Piper Louise Sarah Samuel**

Representative : **Ms A Hoxha, agent for Represent
Law Ltd**

Respondent : **Mr N and Mrs V Morrison**

Representative : **In person**

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

Tribunal Members : **Tribunal Judge Prof R Percival
Mr S Mason BSc, FRICS**

**Date and venue of
Hearing** : **7 November 2022
10 Alfred Place**

Date of Decision : **25 January 2023**

DECISION

Orders

- (1) The Tribunal makes rent repayment orders against the Respondents to each of the Applicants individually in the sum of £3,640, to be paid within 28 days.
- (2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application

1. On 5 May 2022, 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 7 June 2022.
2. We were provided with a hearing bundle containing material from both parties of 143 pages.

The hearing

Introductory

3. The hearing had initially been scheduled for a face to face hearing at 10 Alfred Place. As a result of anticipated travel disruption caused by a railway strike, the hearing was changed to a remote one, using the CVP platform
4. The property is a house with four bedrooms, plus a reception room that was at the material time used as a bedroom, three bathrooms, a kitchen and a sitting room.
5. The Applicants were represented by Ms Hoxha of Represent Law Solicitors. The Respondents represented themselves.

The alleged criminal offence

6. The Applicants allege that the Respondents were guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 (“the 2004 Act”), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

7. The Applicants case is that at the relevant time the property was the only or main residence of five occupiers comprising two or more households, and it was therefore subject to mandatory licencing under Part 2 of the 2004 Act and the Licencing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018.
8. It was agreed that the Applicants occupied the property under a tenancy which started on 16 September 2020 and terminated on 16 September 2021. In addition, there were two other tenants, Federico Pantaleoni and Yehia Shamseldin. The latter died on 23 June 2021. The relevant period in respect of the criminal offence, and the RRO, is therefore from 16 September 2020 to 23 June 2021.
9. The Applicants produced evidence in the form of an email from an officer of Barnet Borough Council to the effect that the property was not licenced as an HMO.
10. On the papers, the Respondents argued that all of the tenants conducted themselves as one household. They accepted at the hearing that this was based on a misunderstanding of the meaning of “household” for the purposes of HMO licencing (see section 258 of the 2004 Act).
11. Although the Respondents did not raise it, we considered whether this error was capable of founding a defence of reasonable excuse under section 72(4) of the 2004 Act.
12. Mr Morrison volunteered that the Respondents should have been more knowledgeable about the definition of an HMO. It became apparent that he thought that, before the changes made by the Licencing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018, the property would not have been an HMO by virtue of a change in the approach to the concept of a household, and/or the number of occupiers. While neither of those things are true, it is the case that the requirement in respect of the number of stories before 2018 would have excluded the property from the definition of an HMO.
13. In answer to a question from the Tribunal, Mr Morrison said that the Respondents used a website, or part of a website, designed for landlords by Barnet Borough Council, and otherwise used google searches.
14. We do not consider that, in these circumstances, the Respondents can make out a defence of reasonable excuse. There is no claim to reliance of wrong advice, or an absence of advice, from a managing agent, for instance, which in any event would be only rarely capable of founding a reasonable excuse (*Aytan v Moore* [2021 UKUT 244 (LC), paragraph [40]. We have not been provided with screen shots or other evidence of

the contents of the Barnet Borough Council website to which Mr Morrison referred, but we find it inherently unlikely in the extreme that such a website would provide advice as erroneous as it would have had to be to have resulted in the Respondents' beliefs as to the law. Googling is never a reliable means of securing accurate legal advice.

15. Accordingly, we find that, beyond a reasonable doubt, the Respondents committed the offence in section 72 during the relevant period.

The amount of the RRO

16. In considering the amount of an RRO, we take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

“The following approach will ensure consistency with the authorities:

- a. Ascertain the whole of the rent for the relevant period;
- b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. ...
- c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made ... and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
- d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).” [We add that at this stage, it is also appropriate to consider any other circumstances of the case that the Tribunal considers relevant].

17. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say

“I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked.”

18. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

19. There was no dispute that the rent paid in respect of the property as a whole was £2817 per month, and the relevant period is from 16 September 2020 to 23 June 2021. We calculate the total rent to be £26,001, calculated on a daily basis. The rent was paid by Ms Samuel, who acted, with the agreement of all parties, as the lead tenant in respect of rent. It was accepted that Ms Samuel collected rent from the other Applicants, and, when she had done so, paid the rent to the Respondents from her account.
20. On the evidence, therefore, each of the Applicants in this application, as a matter of substance, paid a fifth of the total, and that three fifths of the total that was paid over from Ms Samuel's bank account was the total of their personal contributions.
21. Ms Hoxha, for the Applicants, submitted, however, that the total possible RRO that we should determine at stage (a) was the total paid over by all the tenants. The basis for this argument was the judgment of HHJ Luba KC in the county court in *Sturgiss and Another v Boddy and Others* (19 July 2021), which is available under the (non-official) neutral citation [2021] EW Misc 10 (CC) on bailii.org. The judgment is generally known for HHJ Luba's analysis of the way in which legal relations are affected by the phenomenon of "churn", where tenants succeed each other informally in shared rented accommodation. The particular context was the statutory regulation of deposits, and the penalties for failing to protect them.
22. However, Ms Hoxha relied on the case for the proposition that, at least where, as here, the rent payment figure was given as a global figure, and each tenant was jointly and severally responsible for the total, the obligation to pay was indivisible. In *Sturgiss*, for the purposes of determining the multiplicand relevant to a statutory penalty for failure to protect a deposit, HHJ Luba said at paragraph [85],

"I do not consider the liability severable £1,205 is the deposit to be treated as paid and received for the tenancy of the whole flat by the tenants at each of the three churns with which I am concerned. And it is to that sum that the multiplier falls to be applied. If that is more than equity would suggest should be recovered by these two claimants alone, it has always been open to the other co-tenants to join in the claim. They have elected not to do so."
23. Mr Morrison, in reply, argued that it could not be right that tenants could each in turn seek an RRO for the whole of the rent in such circumstances.
24. The first thing to note is that if Ms Hoxha's ingenious submission were to be right, every one of the substantial number of RROs that have been made in applications in which the applicants before the Tribunal were not the full number of applicants paying rent during the period of the

offence has been wrongly calculated. This includes a number of cases that have gone before the Upper Tribunal and the Court of Appeal. That is not a reason to disregard the submission, but it is indicative of its significance.

25. Section 44 of the 2016 Act deals with the calculation of an RRO. By section 44(2), “[t]he 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 ...”. As the terminology of the section (and indeed, this Part of the Act as a whole) makes clear, a rent repayment order is made in respect of an individual tenant. The part does not refer to a tenant’s liability to pay rent, but rather to what rent he or she has actually paid. That concrete payment is in issue is reinforced by the reference to the landlord being obliged (ie by an order) to “repay”. That implies (as does the title of the order itself) that the order is limited to that which was paid in the first place. If an order could amount to more than what was paid by an individual tenant, it would not be a *repayment*.
26. This approach, which emphasises real payment and consequent repayment in the construction of section 44 echoes the approach of the Court of Appeal (and Upper Tribunal) in *Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041, [2022] 1 WLR 4558 (see the passage from paragraph [18] following). Albeit while dealing with a different issue, the Court’s discussion proceeds on the basis that the core criterion is actual payment (during the relevant period), not some broader concept of entitlement or liability as argued by Ms Hoxha.
27. We add that Ms Hoxha account would be inequitable, for the reason identified by Mr Morrison, and contrary to the policy of the Act, for which see paragraph [23] of *Kowalek*.
28. Accordingly we reject Ms Hoxha’s submission. The correct maximum is the amount actually paid by the Applicants during the relevant period. The maximum in respect of each Applicant individually is accordingly £5,200.
29. It is agreed that none of the Applicants were in receipt of universal credit or housing benefit.
30. It is agreed that the Applicants were responsible for paying for the utilities, so there is no deduction to be made at stage (b).
31. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take

that into account. We note that it is this offence that arises by far the most often in applications before the Tribunal.

32. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1).
33. First, we consider whether it would be appropriate to consider that the Respondents are professional landlords. Mr Morrison said that he had let 3 Colindeep Gardens for about ten years. He only mentioned in connection with his financial circumstances (see below) that he had a second rental property in Barnet.
34. In these circumstances, we can plausibly conclude that the Respondents could be accounted professional landlords. But, in our view, that label alone is not all that needs be said in terms of seriousness. More important is the efforts that the Respondents made to keep up to date with their legal responsibilities. In evidence, Mr Morrison said that he periodically attempted to keep up with legislation. We asked how, and he said he googled searched, which took him to landlord websites and others.
35. It is clear that the Respondents had no appropriate system for keeping up to date with their responsibilities. Relying on intermittent google searches is not a responsible attitude. Landlords do not need to spend a great deal of money to join a landlord's association which provides members with legal updates, nor to join a local authority landlords forum, or subscribe to one of the landlord's websites that sends regular updates. The Respondents had taken none of these steps.
36. Secondly, we consider the issues in relation to fire precautions and related matters.
37. There was conflicting evidence as to whether there were adequate smoke and carbon monoxide alarms in place. The Applicants' evidence was that there was only one smoke alarm, and that that was not working.
38. The Respondents state that there were operational smoke alarms both upstairs and downstairs, and a carbon monoxide alarm downstairs, in the dining end of the kitchen/diner. Mr Morrison also draws attention to the provision in the tenancy agreement that the tenants agreed to "keep fire and smoke alarm in good working order and to let the landlord know of any failure". It was agreed that any alarms were battery operated, not wired.
39. The Applicants said there were no fire doors. Mr Morrison said that there were fire doors to the two rooms downstairs used as bedrooms. The kitchen was an open plan kitchen/diner, with no door at all.

40. Mr Morrison agreed that there was no fire blanket in the kitchen.
41. There was a particular conflict in respect of a specific incident. According to the Applicants, Mr Pantaleoni was exposed to carbon monoxide emanating from the faulty boiler (see below) for a prolonged period. The Applicants account was that the engineer who came to attend to the boiler had a long and acrimonious telephone conversation with Mr Morrison, in which he blamed Mr Morrison for the danger of carbon monoxide poisoning. Mr Morrison denied this. He did have a telephone conversation with the engineer, he said, but this was to do with the need for building work to close gaps around the flue (work that required a general builder and was not for the engineer). Mr Morrison doubted that Mr Pantaleoni had been affected as alleged, and effectively accused the Applicants of dishonesty.
42. Our conclusion on fire safety was that the property was not in the condition it should have been in, and would have been in had it been licensed. It is highly probable that the licensing authority would have required mains wired alarms, and at least a fire blanket in the kitchen. In the absence of a contemporaneous inspection, we cannot be sure whether the Applicants or Mr Morrison are right about the fire doors. But in any event, it is unlikely that the property would have been licensed without a fire door to kitchen, and to the other bedrooms (or, at least, a condition to provide them would have been put on a licence).
43. Either the alarms were not effective, because the batteries had run out, or there was an evident danger that they would become so. The requirement for mains wired in alarms is precisely to avoid this danger. It is no answer to say that the tenants were responsible for changing the batteries.
44. On balance, we do not think that the Applicants have discharged the burden of proof in respect of the poisoning of Mr Pantaleoni, but we do not think it changes a great deal. Even if no-one suffered from carbon monoxide poisoning, all the tenants were put in danger of that happening given the state of the alarms.
45. In respect of fire safety, the property was seriously lacking. We have outlined the defects above. Fire safety is possibly the most important responsibility of a landlord of an HMO; and a failure to properly assure it is a most serious failing.
46. The Applicants made other allegations about the condition of the property. The boiler failed on a number of occasions. The Respondent's account was that there had been a boiler issue, but that it had been resolved.

47. The Applicants' evidence was that there had been leaks in both the kitchen ceiling and in one of the bedrooms.
48. The Respondents stated that the leak into the kitchen had been a minor one resulting from the failure of sealant around a tap in the bathroom above. It was repaired within a week.
49. There was also a complaint of slugs in the kitchen.
50. Our conclusion on disrepair in general is that the property was not perfect, and some of the issues would certainly interfere with the Applicants' amenity in the property. But, broadly speaking, the disrepair that was evident was towards the more moderate end of the spectrum of HMOs coming before the Tribunal.
51. In summary, the Respondents were professional landlords in a small way, and were cavalier about ensuring that they were aware of their responsibilities as landlords. Most importantly, the fire safety and carbon monoxide provision in the property were seriously inadequate. We take into account the other matters referred to above, but they are of much less moment.
52. We have considered the range of cases in which the Upper Tribunal has sought to provide guidance to First-tier Tribunal as to the percentage of the total possible RRO that should be awarded. In particular, we have considered the cases of *Acheampong* itself, *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8; *Aytan v Moore* [2022] UKUT 27 (LC); *Hallett v Parker* [2022] UKUT 239 (LC); *Hancher v David and Others* [2022] UKUT 277 (LC); and *Dowd v Martins and Others* [2022] UKUT 249 (LC), which give a range of percentages between 25% and 90%. We take account of the fact that most of these cases were decided before the approach in *Acheampong* was set down, and make our stage (c) findings in the light of that.
53. Considering the cases above against the facts we find, we assess the stage (c) starting point at 75%.
54. At stage (d), we must consider what effect the matters set out in section 44(4) have on our conclusions so far. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord. We must have particular regard to these matters, but we may also have regard to such matters as we consider relevant in the circumstances.
55. As Judge Cooke noted in *Acheampong*, there is a close relationship between stages (c) and (d). Insofar as we have already made findings as to the status of the Respondents as professional landlords and in

relation to their conduct in bringing about the failures in respect of the condition of the property, we do not double count them in considering the section 44(4) matters.

56. The Applicants alleged that their deposits were not protected at all, despite assurances to the contrary. The Respondents produced a certificate from Mydeposit, an authorised tenancy deposit scheme. We are prepared to accept that the deposits were protected.
57. A distinct complaint by the Applicants is that the Respondents withheld a sum from the tenants' deposits in respect of unpaid rent. Mr Morrison agreed in evidence that he had said he would allow a rent holiday for a month, but then claimed that he had been strong-armed into doing so, so he withheld the deposit to the extent of the unpaid rent. As a result, there was a dispute as to return of the deposit. The Applicants reserve their positions in respect of that dispute, and we consider it would not be appropriate in those circumstances for us to come to a conclusion on the merits of the dispute, which, we understood, was to be adjudicated elsewhere.
58. As to the tenants, the Respondents make various allegations of poor conduct.
59. On a small number of occasions, rent payments were late, albeit within the month due.
60. The Respondents also charge the Applicants with making a mess in, particularly, the front garden, which caused complaints from the neighbours. There is no independent evidence of complaints. The Applicants say that the garden was untidy, but that they cleaned it up, and it remained clear thereafter. The Respondent agreed that the garden was tidied up at a certain point date.
61. The Respondents claim that the tenants took to climbing on the low flat roof to the left of the property, viewed from the road, then climbed down to access the property by the back door. The Respondents suspected that this had caused the leak in the downstairs bedroom. They produced a photograph of three of the tenants on the flat roof.
62. The Respondents said that they had paid a gardener to attend the property, and that he reported that the tenants were smoking cannabis in the back garden.
63. The tenancy agreement required the consent of the landlord before utility providers were changed. The Respondents say that the Applicants did change the gas and electricity suppliers, and provided documentary evidence, without consent.

64. As to the charge of cannabis consumption, we are not prepared to come to the conclusion that the Applicants were engaging in peri-criminal behaviour on the hearsay nose-witness evidence of a gardener.
65. Our conclusion as to the other complaints about the Applicants' conduct (which was, the cannabis smoking apart, largely accepted by them, subject to some minimisation) was that it showed some disregard for proper conduct in tenants, but none of it was by any means towards the more serious end of the spectrum. In particular, being in arrears for a few days or a week or two is not the level of arrears that the Tribunal would see as serious misconduct by a tenant. We think it right to make some downward adjustment in respect of the RRO percentage in the light of the Applicants' conduct, but it is modest.
66. The Respondents did provide evidence of their means as relevant to the amount of an RRO.
67. Mr Morrison's evidence was that he had been made redundant in March 2020. After a year of unsuccessful job hunting, Mr Morrison started his own business. That was paying him £800 a week, without tax (he produced pay slips). Mrs Morrison is a teacher, and produced two payslips which appear to show an annual salary of £32,151. The actual payslips have a "process date" of 30/09/2022 (£1,352) and 31/10/2022 (£2,188), but no dates for the pay period are evident. The apparent monthly variation is unexplained. The only evidence of outgoings was a mortgage payment of £1,563 a month.
68. Mr Morrison had not indicated until the day of the hearing that he had a second rental property in Barnet. In evidence, he said that 3 Colindeep Gardens was currently occupied by his son, so provided no rental income. He claimed to earn, clear of the mortgage, £300 from the other property, which he said was let to a family. There was no documentary evidence relating to this property.
69. The Applicants provided a market valuation of the Respondents' own home from a website of £1.638 million. Mr Morrison agreed that there would be some equity in the family home, as there would be in the rental properties.
70. In assessing the financial consequences on the Respondents we are aware that we have been provided with only partial information. We have only been shown the figures for one mortgage, when the evidence is that the second rental house, at least, is mortgaged. We note that it is only at the hearing that Mr Morrison said that he had the second rental property. It is, of course, for the Respondents to provide the relevant information, and we must do the best we can with what we have.

71. Although we note that the Respondents' son is living apparently rent free at 3 Colindeep Gardens at the moment, that is a decision taken by the Respondents that we cannot be bound by. The property could be let, the son could pay rent, or the property could be sold. Further, we infer that there must be substantial equity in the family home (given the market valuation and the monthly mortgage), and we have been told that there is also some equity in the second rental property. No doubt it would be possible to borrow against this equity.
72. On the other hand, we accept that the Respondents' other income is, if not very modest, then not ample either. We conclude that we should make some allowance for the Respondents' financial circumstances, but the amount of that is limited.
73. Weighing up these factors (and again taking account of the cases referred to above at paragraph [52], we conclude that the RROs should be set somewhat, but not a great deal, lower than the stage (c) starting point. The final figure is 70% of the maximum allowable.

Reimbursement of Tribunal fees

74. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

75. 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.
76. 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.
77. 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.
78. 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:** 25 January 2023

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.

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.

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

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