



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

Case Reference : **LON/00AE/HMF/2022/0145**

Property : **2 Gorefield Place, Kilburn Park, London
NW6 5FG**

Applicant : **Mr Alexander Robinson**

Representative : **Mr C Neilson, Justice for Tenants**

Respondent : **Emil Aliev and Natalia Nikiforova**

Representative : **Mr C Wood, of ML Estates**

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

Tribunal Members : **Tribunal Judge Prof R Percival
Mr A Lewicki MRICS**

**Date and venue of
Hearing** : **20 January 2023
10 Alfred Place**

Date of Decision : **31 January 2023**

DECISION

Orders

- (1) The Tribunal makes a rent repayment order against the Respondents in favour of the Applicant in the sum of £6,110, 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. 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 dated 25 May 2022. Directions were given on 16 August 2022.
2. In accordance with the directions, we were provided with an Applicant’s bundle of 163 pages. We received from the Respondents an un-indexed, un-paginated bundle of 40 pages, including a number of blank pages

The hearing

Preliminary

3. Mr Neilson of Justice for Tenants represented the Applicant. Mr Wood of the managing agents, ML Estates, represented the Respondents.
4. Mr Robinson, the Applicant, give evidence, having served a sworn witness statement, as required by the directions. There were no witness statements in the Respondent’s bundle. Ms O’Hare, who had been the flat mate of the Applicant in the property, had attended in order to give evidence for the Respondent, and Mr Wood was also intending to give evidence. Having heard submissions, and with Mr Neilson’s agreement, we allowed Ms O’Hare to give evidence on the basis that an email from her in the bundle dated 18 November 2022 would stand as her witness statement. As for Mr Wood, the Respondents bundle opens with a letter headed “To whom it may concern”. This we agreed could stand as Mr Wood’s witness statement. In each case, the evidence of these witnesses was limited to the matters covered in those documents.
5. We decline an application to allow in additional evidence by the Applicant. The documents in question had only been submitted to the Tribunal and the Respondent in the afternoon of the day before the hearing. Mr Wood indicated that, as a result of particular personal circumstances, he had been unable to look at these documents at all.

Given those circumstances, which we agreed provided a full justification for Mr Wood's inability to address the documents, we concluded that he would be prejudiced by their reception.

6. We did allow, with the agreement of Mr Neilson, the Respondents to provide three photographs indicating the condition of the flat at the start of the tenancy.
7. The property is a second floor flat in a recently constructed purpose built block. It consists of two bedrooms (one with an en suite bathroom), a bathroom and an open plan sitting room/kitchen.

The alleged criminal offence

8. The Applicant alleges that the Respondent was guilty of having control of, or managing, a house required to be licenced under Part 3 of the Housing Act 2004 ("the 2004 Act"), section 95(1). "House" in the 2004 Act is defined as a building or part of a building consisting of one or more dwellings (section 99). The offence is set out in section 40(3) of the 2016 Act 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.
9. The Applicant's case is that the property was situated within a selective licensing area as designated by the London Borough of Brent ("the council"). The relevant scheme came into effect on 1 June 2018 (and will persist until 30 April 2023) and applies to, among others, the Kilburn ward. It was not contested that the property was located in that ward. The scheme applied to any property let under a tenancy, subject to a number of exceptions that do not apply to the property.
10. The Respondents did not contest that the criminal offence had been committed, and nor did they raise the issue of reasonable excuse (section 95(4) of the 2004 Act). However, and at Mr Neilson's suggestion, the Tribunal did consider whether there might be such a defence available to them.
11. We concluded that there was no evidence that could constitute a reasonable excuse. The only even remotely possible claim to such a defence was that the Respondents were Russians, resident in Russia, and, as Mr Wood told us, unable to come to this country as a consequence of the current international situation, and therefore had to rely on their agent.
12. Guidance on reliance on an agent as a reasonable excuse is given in *Aytan v Moore* [2022] UKUT 27 (LC), [2022] H.L.R. 29 at paragraph [40] in the following terms:

"We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a

contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

13. The Respondents are unable, in this case, to satisfy the first (“at the very least”) requirement of a contractual obligation on the agent, nor that they had good reason to rely on their competence and experience, even if the third criterion – a reason, such as living abroad, why they could not inform themselves – might have been possible to have made out, had we had any evidence on the issue, which we did not.

The amount of the RRO

14. The relevant period in respect of which the RRO is claimed is 8 June 2020 to 7 June 2021. Both occupants – the Applicant and Ms O’Hare – moved in on 8 September 2017, and the tenancy ended on 7 August 2021.
15. In considering the amount of an RRO, the Tribunal will 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.

16. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

“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.”

17. 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.
18. During the relevant period, the Applicant’s evidence was that he paid a total rent of £12,220.08, and did not receive any of the relevant benefits. His evidence of payment was supported by bank account details. It was put to him that during part the period he was unemployed. He agreed that he was, but stated that he had not been eligible for Universal Credit or Housing Benefit.
19. The Applicant paid his rent contribution to Ms O’Hare, who forwarded both of their rents to the ML Estates, acting on behalf of the Respondents. Both parties referred to Ms O’Hare as the “lead tenant”. Ms O’Hare was nominated as “lead tenant” in the tenancy agreement. That term occurs in the tenancy agreement only in connection with deposit protection, but was clearly given a wider de facto significance by the parties, such that it was Ms O’Hare’s role to liaise over general matters with the managing agents, and it was to Ms O’Hare that Mr Wood gave, he said, all relevant documents.
20. The evidence was that the rent had been reduced for a period in 2020 to reflect the fact that Ms O’Hare was staying with her parents during the second London pandemic lockdown. The evidence was that there was no reduction in the Applicant’s payments to Ms O’Hare during this period (understandably, as the reduction was a consequence of Ms O’Hare’s absence).
21. Mr Wood made a somewhat half-hearted submission that, as the rent was expressed in the tenancy agreement as being a joint and several liability of the tenants, the total RRO should be reduced by half of the rebated rent. We reject this submission. What matters is what is actually paid during the relevant period (*Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041, [2022] 1 WLR 4558), and we are satisfied that that, in the Applicant’s case, is represented by his payments to Ms O’Hare. We note that, if liability for rent was the criterion, then it was at least arguable that joint and several liability would (if anything) mean that a tenant in the Applicant’s position could claim the whole rent payable under the tenancy agreement, rather than that the principle suggesting that each tenant was constructively responsible for a set percentage of whatever the total amount paid over was.

22. We find that the total maximum RRO would be £12,220.08.
23. As to stage (b), the tenants were responsible for paying for utilities (paragraph 4, sub-paragraph 4 of the tenancy agreement). Accordingly, there are no deductions to be made at this stage.
24. 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 95(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. One or other of the failure to licence offences – section 95(1) and section 72(1) – are, however, much the most common of the offences encountered by the Tribunal.
25. We turn to the second of the seriousness axes, the seriousness of the offence committed by the Respondents compared to other offences against section 95(1). By extension, we also consider offences under section 72(1). It is convenient to order this part of our decision by considering the list of matters that Mr Neilson submitted aggravated the seriousness of the offence, drawing on the evidence heard as appropriate.
26. The first aggravating matter was the length of the offending. The selective licensing scheme was introduced on 1 June 2018, so the property was unlicensed from then until (at least) the Applicant and Ms O'Hare left on 7 August 2021, a period of over 38 months. The Respondents now have a licence. We say “at least”, as there is in the bundle an email from a company called The HMO Licensing Company confirming that a selective licence application had been submitted, dated 17 November 2022. We do not know whether the property was let between 7 August 2021 and 17 November 2022, and so can only rely on the shorter period established above.
27. Mr Neilson referred us to paragraph [52] of *Ayton v Moore* for a reference to the Upper Tribunal accepting the length of the offence as a point indicating increased seriousness. In that case, it appears that the period of occupation without a licence that the Upper Tribunal was dealing with was a couple of weeks under two years.
28. We accept that there was a considerable period (and could, possibly, be a very considerable period) during which the property remained unlicensed, and we consider that it does significantly aggravate the seriousness of the offence.
29. Relying on the same passage in *Ayton v Moore*, Mr Neilson then urges us to conclude that the Respondents did not have (in practice, through their agents, ML Estates) a proper means to keep up to date with their legal obligations. Given the limited nature of the evidence from the

Respondents, for the reasons we give above, we did not have any direct evidence of what, if any, processes the managing agent had in place. Mr Neilson urges us to infer from the lengthy period during which the property remained unlicensed that they cannot have had adequate processes in place. We accept that there is some justice in this approach, but we must also be astute to avoid double-counting aggravation over these two categories. We give the charge some weight.

30. The next issue relates to fire safety. In his witness statement, the Applicant makes a number of accusations relevant to fire safety. At the end of the evidence, however, the situation was rather different.
31. The position was this: first, it was no longer contested that the front door of the flat was a fire door. Although there was no self-closing mechanism on the kitchen/sitting room door, we cannot be sure that it was not a fire door. Without in any way doubting his honesty, we do not think we can put a great deal of weight on the Applicant's evidence that the door did not feel like a fire door, because it was too light. Nor is the absence of a self-closing mechanism on the door sufficient to exclude the possibility of it being a fire door. On the other side, the building had been constructed within the last ten years. It is overwhelmingly likely that it was built with a fire door to the kitchen/living room. All in all, the Applicant has not satisfied us that either door was not a fire door.
32. Secondly, there was a smoke alarm in the communal hall, and a heat detector in the kitchen. These are required by the Council's selective licencing conditions. A carbon monoxide alarm would not be required, in the absence of a solid fuel burning combustion appliance (paragraph 15.2 of the Council's selective licence conditions).
33. Finally, there are no requirements for fire blankets or other fire fighting equipment in the licence conditions.
34. Our conclusion, therefore, is that there were no deficits in fire safety precautions in the flat.
35. We turn to the lack of documents. It was agreed that there was no requirement for a gas safety certificate. The Applicant's case was that he had not been given sight of an electricity safety certificate, an energy performance certificate, or a How to Rent guide.
36. The evidence of Mr Wood was (initially) that he had given all of the relevant documents, including these, to Ms O'Hare at the outset of the tenancy. Ms O'Hare's evidence was that all documents pertinent to the flat were kept in a box stored under the television. She had a specific recollection of having seen the How to Rent guide, but could not be certain of the other documents. She thought, however, that they would

have been in the box. The Applicant was aware of the box, but had no recollection of seeing the relevant documents.

37. Given that the requirement to have an electricity safety certificate was only introduced in April 2021, towards the end of the tenancy period, we asked Mr Wood if he could be sure that he had provided one at that point. He said that he would have thought that that was something he would have done, but he had no specific memory of it.
38. Mr Wood's evidence was that he had secured the relevant certificates, but had not, through inexperience, thought to put them in the bundle. The Applicant's case was directed at the lack of provision of the certificates, rather than a positive assertion that they had not been procured.
39. Our conclusion in respect of the relevant documents is that, with the possible exception of the electricity safety certificate, it is more likely than not that they were provided to Ms O'Hare at the commencement of the tenancy, and that they were put in the documents box under the television. We are significantly more doubtful that the electricity safety certificate was produced (and possibly procured). The upshot is that there may well have been one missing document for a short period in respect of the flat, but otherwise we should proceed on the basis that the documents were available in the flat in the way we have described.
40. Turning to disrepair, the Applicant relied on four elements: a leak in the ceiling of the sitting room/kitchen; intermittent heating and hot water outages; a mouse infestation; and the failure to prevent trespassers in the communal areas of the block.
41. The evidence was that the leak had been apparent during the initial viewing of the flat by the (then) prospective tenants, and they had been told that it was being investigated and would be fixed. The Applicant indicated that the time frame was then said to be by the end of the year. In fact, it seems it was not finally remedied until March 2020. There are photographs showing water ingress damage on the ceiling. The Applicant's evidence was that rain water came in when there was very heavy rain.
42. Mr Wood's evidence was that he had had innumerable communications with the freeholder, Catalyst (a housing association which has now merged with Peabody). It had proved very difficult to isolate the source of the leak, and on more than two occasions, Catalyst had used cherry-pickers to investigate and attempt to remedy the problem. Each time a supposed remedy was implemented, it took some time before the next incident of heavy rain to demonstrate whether the repair had been successful or not. Eventually, it was established that the leak was the result of what appears to us to have been a design fault in the balcony of a flat above and to one side of the property.

43. The heating and hot water system was communal, served by a boiler in the basement. The evidence was that about every six to eight weeks in winter, the heating and hot water system would fail in the flat. The Applicant's evidence was that the outages occurred when the pressure fell on an installation located in the flat, but it appears that remedial action related to the system as a whole.
44. The Applicant became aware of a mouse problem in the flat when he saw one, in October 2020, and noted evidence of mouse droppings in cupboards. It was reported to ML Estates. The evidence as to what happened next was somewhat unclear, but we think that ML Estates simply asked the Applicant to tell them if the problem persisted, and the Applicant did not contact them again. The evidence was that the tenants had not purchased and deployed mouse traps or poison.
45. There were a number of incidents of trespassers gaining entrance to the communal areas of the flats, to therein consume controlled drugs. These (or some of them) were reported to ML Estates. Mr Wood's evidence corroborated the Applicant's that this problem arose at the building. Mr Wood had made repeated representations to the freeholder, and on one occasion had reported a drug-taking trespasser to the police (to no effect). Mr Wood explained in some detail the explanation he had received from the freeholder as to how the trespassers were gaining entrance, and the steps taken by the freeholder to stop it.
46. Each of these issues, save for the mouse problem, amounted to problems the solution of which, it seems to us, fell to the freeholder, Catalyst, rather than to the Respondents as leaseholders. We do so only making entirely orthodox assumptions about the nature of the division of responsibilities between the freehold owner and the leaseholders (the Respondents). ML Estates stood in the shoes of the leaseholder in their relationship with the freeholder. The overall effect of the evidence was that ML Estates did notify the freeholder of the problems, and undertook an appropriate amount of nagging and chivvying of them to resolve the issues. No doubt there comes a time when a leaseholder landlord of assured tenants has a responsibility to escalate action against a freeholder to the extent of taking legal action to secure the appropriate level of repair within the leasehold property. But in none of these examples, in our judgement, was that point reached. The closest was in relation to the leak, but we are persuaded by Mr Wood's explanation, which indicates that, at a number of points, it would have appeared that the remedy had, or would shortly, be effected, and each time (until March 2020), the remedy proved ineffective. In such circumstances, it does not seem to us to be unreasonable that the managing agent did not seek to take legal action.
47. As to the mouse problem, we agree with Mr Wood's submission that this cannot really be considered an "infestation". It appears to be a small

problem that disappeared of its own accord. In the absence of continuing issues, we do not see it as reflecting badly on the Respondents.

48. Finally, the evidence was that the Respondents let this and another property in London. The instant property had been managed by ML Estates since 2015. Mr Neilson submitted that this meant that the Respondents fell to be considered as a professional landlord. Mr Wood's submission was that a professional landlord was one with at least eight or ten properties who made a living from letting, and the Respondents did not fall into this category.
49. There are a number of authorities that hold that the landlord of a much smaller number of properties than that posited by Mr Wood is capable of being a professional landlord.
50. But in a situation such as this, we do not think that it is helpful to impose a binary distinction between non-professional/professional landlord, such that the distinction would have a significant impact on the amount of the RRO we should award. The Respondents are long (or long-ish) term landlords of two properties, in which they provide homes for others for financial gain. As such, they have a responsibility to adhere to regulatory requirements, and to arrange their affairs so as to do so effectively. We do not think we need to go further than this. In this case, clearly, they have failed to do so.
51. 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%.
52. In this case, we have found that there were no significant fire safety issues, and if there were disrepair issues, they were, insofar as they were the responsibility of the Respondents, marginal. We have indicated our approach to whether or not they were professional landlords. Taking those considerations into account, we would have considered a figure below 50%. However, the length of time that the offence was committed, and the related inference that the Respondents, or, as the agents standing in their shoes, ML Estates, did not have an adequate process to keep abreast of their legal responsibilities, are serious matters which speak for a higher percentage. At stage (c), therefore, we conclude that a percentage RRO of 50% properly reflects the seriousness of the offence.
53. As to stage (d) of the process laid down in *Acheampong*, there were no significant and relevant complaints as to the Applicant's conduct. We do

not consider complaints about the fact that the Applicant makes this application, or the time in which it was made, can stand as “conduct of the tenant” for the purposes of section 44(4). While complaints of this nature were made in the written material submitted by the Respondents, Mr Wood was wise not to repeat them in his submissions before us.

54. Equally, we do not think there were conduct-related complaints made by the Applicant over and above the specific matters dealt with in relation to stage (c) above. Fairly, when he gave evidence, the Applicant did say that, apart from the specific complaints made, it was overall a nice flat.
55. There was no claim by the Respondent in respect of their financial circumstances.
56. We therefore conclude that there is no adjustment to be made at stage (d), and we determine the RRO at 50% of the maximum.

Reimbursement of Tribunal fees

57. 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

58. 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.
59. 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.
60. 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.
61. 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:**

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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.