FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2021/0029**
HMCTS code		**V: CVPREMOTE**
Property	**:**	**56B Marquis Road, Camden, London NW1 8UB**
Applicant	**:**	**Holly-Marie Van Krinks (A1)** **Christine Schneider (A2)** **Simone John (A3)**
Representative	**:**	**Ms C Sherratt** **Justice for Tenants**
Respondent	**:**	**Shravan Sood**
Representative	**:**	**-**
Type of application	**:**	**Application for a rent repayment order by a tenant** **Sections 40,41,43 & 44 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge D Brandler** **Mr S Wheeler MCIEH, CEnvH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR** **By remote video hearing**
Date of hearing	**:**	**2nd February 2022**
Date of decision	**:**	**18th February 2022**

DECISION

Decision of the tribunal

(1) The Respondent shall pay to the Applicants a Rent Repayment Order in the total sum of £16,464.00. This

sum to be paid within 28 days of this order in the following proportions to the Applicants:

(a)To Holly-Marie Van Krinks (A1) the sum of £5,696.00
(b) To Christine Schneider (A2) the sum of £5,620.00
(c)To Simone John (A3) the sum of £5,148.00

(2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 10/03/2021 seeking a Rent Repayment Order ("RRO") under section 41 of the Housing and Planning Act 2016.

2. Directions were issued on 8th July 2021.

3. The application alleged that Shravan Sood, "the respondent" landlord, failed to obtain an HMO licence for Flat 56B Marquis Road, Camden, London NW1 8UB ("the property"), in breach of the additional HMO licensing requirements operated by the London Borough of Camden ("the Council").

4. The additional licensing scheme introduced by the Council became mandatory on 08/12/2015 and required all properties located within the Council occupied by three or more persons comprising two or more households, to be licenced under an additional HMO licensing scheme.

5. The property is a three-bedroom leasehold flat located on the 1st and 2nd floors of a terraced house. The living room was used as the fourth bedroom. The occupants of the 4 rooms shared kitchen and bathroom facilities.

6. The history of the occupancy is briefly as follows.

7. On 24/02/2019 Holly-Marie Van Krinks (A1) moved into the property and paid a rent of £645 per month. On 25/01/2020 her rent was increased to £650 per month. She replaced a tenant called Gabriel who was included on the original tenancy agreement granted by the respondent to 4 tenants on 25/08/2018 for a period of one year at a monthly rent of £2493.63, although the end date appears to have been wrongly stated to be 24/08/2018 [A34]. The contract appears to have been altered on 24/02/2019 to accommodate A1's name on the contract [A32-33]. A1 moved out of the property on 22/06/2020.

8. Christine Schneider ("A2") moved into the property on 14/07/2019. She replaced one of the original tenants named M Seddon. She initially paid £625 pcm until 25/01/2020 when her rent was increased to £655 pcm. She moved out on 22/06/2020.

9. Simone John ("A3") moved into the property on 20/07/2019. She replaced one of the original tenants named S Stuart. She initially paid a rent of £580 pcm for the smallest room until 25/01/2020 when her rent was increased to £591. She moved out on 22/06/2020.

10. All of the applicants were approved by the respondent to move in and replace the original tenants in the property. The respondent took bank details and employment details from each incoming tenant and was in email correspondence with the new tenant, and approved them taking the place of the original tenant.

11. No HMO licence was applied for by the respondent until 14/06/2020.

12. The periods for which the Applicants seek a rent repayment order are as follows:

- A1 seeks an order for the period 14/07/2019-13/06/2020
- A2 seeks an order for the period 14/07/2019-13/06/2020
- A3 seeks an order for the period 20/07/2019-13/06/2020

THE HEARING

13. 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.

14. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the Tribunal. 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 Applicants' Bundle consisted of 152 pages. Any reference to that bundle of documents in this decision will be made in square brackets and referred to as "A" followed by the page number. The Respondent failed to provide a PDF bundle in accordance with the Tribunal's directions. He posted some documents to the Applicant at some point which the Applicant has provided to the Tribunal in two PDF bundles. One of these is headed 'Exhibit 1' and consists of 28 pages. The second is headed 'Exhibit 6' and consists of 26 pages. Any reference to these documents during the course of this decision will be made in square brackets and referred to as either "R x/28" or "R x/26" which "x" indicates the page number.

15. The Applicants and their legal representative, Ms Sherratt, all joined separately and remotely by video connection. The respondent, who was in person, also joined remotely by video.

16. At the start of the hearing the respondent apologised for submitting all of his evidence late, and went on to confirm that in the most recent PDF document sent directly to the Tribunal some three working days prior to the hearing, he had included some additional emails which had not been sent to the Applicants' representative. He was asked to identify which were the additional pieces of evidence, but he was unable to do so, asking instead that the Tribunal use only his pdf document and not the original paper bundle sent to the Applicants.

17. Ms Sherratt opposed this application. She pointed out that the respondent had failed to comply with directions on time or at all, that the late submission of the PDF document to the Tribunal had only been produced by him a few working days before the hearing, and that was done only because the Judge had insisted that if he sought to rely on documents at the hearing, he would have to email them to the Tribunal. Ms Sherratt further pointed out that if the respondent could not identify which documents in the pdf bundle had been newly introduced, that it was unfair on the applicants not to have had notice of this new evidence. Therefore, the PDF of the respondent's original paper documents, submitted by the applicant to the Tribunal must be the only documents that the respondent was entitled to rely upon.

18. The Tribunal took the view that as the respondent could not identify what new evidence he had sought to introduce in his very recent pdf document, that it would be unfair to admit that bundle into evidence. Instead, the Tribunal would consider only his original paper bundles, provided by the applicant by email as a PDF. Those bundles are the exact copies of the paper bundle provided to the Applicants by the respondent.

19. During the lunch break, the respondent sent a further document to the Tribunal in the form of a gas safety certificate for the property dated 19/12/2019. When we resumed the hearing, the respondent was given the opportunity to make submissions as to why that document should be admitted in evidence. His position was that it showed that there were working smoke alarms.

20. Ms Sherratt opposing that application stated that this was new evidence which could have been provided in accordance with the directions, and in any event, did not assist the case in any way.

21. The Tribunal pointed out to the Respondent that there was no mention on that certificate in any event about smoke alarms. Nevertheless, the respondent was permitted to include this new piece of evidence and it was added to the Respondent's bundle.

Occupation and rent paid

22. In oral evidence A1 confirmed she had moved into the property on 26/02/2019 after finding the room on 'SpareRoom'. She replaced a tenant called Gabriel. One of the other tenants was the lead tenant when she first moved in. The custom and practice was that everyone paid their monthly rent to that lead tenant who then paid over the full rent to the respondent. She said that when she moved in, each individual room had its own rent liability according to the size of the room. She does not know how this came about as the agreement was in place when she joined.

23. A1's payments to the previous lead tenant are evidenced by payments to Seddon [A71-73]. From August 2019, A1 became the lead tenant and took responsibility to receive the rent from the other tenants, and pass it on to the respondent in a lump sum every month as evidenced by her bank statements [A74-83].

24. A1 confirmed her monthly payment for her room was £645 until 27/01/2020 when the respondent increased the rent by 3%. The evidence of the payments to the respondent is a lump sum of the full monthly rent from her account, but she told the Tribunal that from January her rent increased to £650 pcm. When the 4th room became vacant for a period after tenant, Chad, moved out, the applicants increased their payments to the respondent by £50 between them.

25. A2 confirmed she had moved into the property on 14/07/2019 taking over the tenancy of the room she occupied from S Stuart who was named on the 2018 tenancy agreement. An agreement was reached between them and A2 paid rent covering the period from when she moved in until 24/08/2019 to S Stuart [A86]. Thereafter she paid rent to A1 for her to pay the rent on to the respondent. A2 confirmed that she had been in email correspondence with the respondent before taking over the tenancy of her room, and that he had approved her occupation and tenancy after taking financial and employment references from her. She paid £625 pcm until 27/01/2020 when the respondent increased the rent by 3%. She then paid £655 pcm.

26. A3 confirmed that she had moved into the property on 20/07/2019 taking over the tenancy from M Seddon for the smallest room in the property. Her first rental payment was made to the lead tenant Seddon [A85]. Thereafter A3 paid her monthly rent via A1. A3 paid £580 pcm until 27/01/2020 when the rent was increased and her payment increased to £591 pcm.

27. Just as the Pandemic lockdown began in March 2020, one of the original 2018 tenants, Chad, moved out. The respondent had given him permission to end his tenancy early for personal reasons. A3 moved into the bigger room that Chad had vacated and she made a one-off payment of £49.50 for the larger room [A82].

28. The respondent does not disagree with any of the statements made above. His only point of contention in relation to the rent due from the applicants is that by the terms of the 2018 tenancy agreement which they

became party to when they took over occupancy of the rooms, they became jointly and severally liable for the full monthly rent of the property. He says they should have paid Chad's portion of the missing rent. However, he provided no figures of what he said was owed in this regard.

29. In any event, the respondent agreed that he had granted the new tenant, Francesca, a sole tenancy at the property. Leaving the Applicants and Chad named on the new tenancy agreement dated 27/01/2020. He did not explain on what terms Francesca held a separate sole tenancy, nor did he provide a copy of that tenancy, or how that tenancy affected the existing tenancy. Nor did he explain how the applicants could remain jointly and severally liable for the full rent of the property, when the respondent had granted a new sole tenancy to another party.

30. Francesca was at the property for only a short while, but no one could clarify the exact dates she was there. There are 'WhatsApp' messages from her in the bundle which indicate that she had already moved in by June 2020 [A145], but no other detail is known.

The conduct of the applicants

31. In an email dated 13/12/2019 [A120] the respondent writes, after having inspected the property, that the flat "*has been well looked after. The bedrooms were looking lovely; the kitchen area less so, especially the cooker. It doesn't look like anybody is making an effort to keep it clean…"* and although he writes that the house is in far from immaculate condition, "*you have been tidy, courteous, low maintenance tenants, and so I would like to propose a nominal 3% rent increase ".*

32. He argues that the applicants had breached their tenancy agreement on multiple occasions and that their conduct should be taken into account. The breaches he raises are detailed as follows: -

(a) Subletting. Although there was no evidence that any of the applicants sublet their rooms. Rather that they had been assigned the rooms with the full agreement of the respondent
(b) Not allowing access to his decorators. Although according to him he had been waiting some years for the freeholders to decorate, and then just a few months prior to the applicants leaving the property he wanted them to give access to decorators. There seemed to be no acknowledgment of the Pandemic and the reluctance of three young women that they did not want strangers to come into their home at that stage.
(c) That they did not respond quickly enough to his emails in December asking for an almost instant agreement to his proposed 3% rent increase. Although no legal notice of increase of rent appears to have been served.
(d) That he had the right to inspect the property at any time, and that the applicants had stopped him inspecting. This was set

out in his email dated 23/12/2019 to A1 "*it is my legal right to take a look around the flat whenever and as often as I want to*" [A119]. He further went on to say that A1 was wrong to make comment about him attending without the full 24-hour notice.

The conduct of the respondent

33. The Tribunal were told about an incident when the respondent emailed A1 around 8 am to inform her that he would be inspecting the property that day. By that time, she was on her way to work and was not able to put away personal items in the room. She told the Tribunal that she felt uncomfortable that the respondent had inspected without the requisite 24 hours' notice, which would have allowed the applicants to put away their private belongings.

34. In response the respondent stated that he couldn't remember exactly what happened, but if he gave less than 24 hours he apologises, and says it would have been out of character.

35. In relation to the respondent's rent increase proposed first on 09/12/2019 by email, the Tribunal was taken to email correspondence in which the respondent sought to increase the rent. By an email dated 23/12/2019 his tone became threatening because he had not heard from A1 and he stated that "*your previous tenancy agreement expired some months ago and you are therefore currently occupying my property without a valid tenancy agreement. This is unlawful and untenable. If I do not hear from you within the next 24 hours I will be forced to take drastic action which I am loathe to do given that you have (until now) been responsible and trustworthy tenants*".

36. He goes on to recognise that it is the Christmas holiday period but that everyone has mobile phone coverage and all he requires *"is a simple yes or no to the proposed rent*"…[A120].

37. In response, he said in oral evidence that all he was trying to do was to rectify a legal oversight since the previous tenancy had expired in August and the applicants had been occupying the property for 4 months without a valid tenancy agreement. He further stated that "*if this occurred during Christmas I can only apologise. I can't remember that far back. It would be out of character for me*".

38. The respondent was referred to an email from A1 in which she responds politely to his email raising various issues of water pressure, asking him not to go into their rooms without 24 hours' notice, thanking him for his understanding in this matter [119] to which he then responds *"Frankly I find your response insulting. I simply asked you to confirm by email whether the rent increase is acceptable…. It is my legal right to take a look around the flat whenever and as often as I want to."* [A119]. It was

put to him that the applicants were within their right to take time to consider his proposal and asking about him pressurising them. The response was that there were two separate issues, one was the 3% increase, and one was the new tenancy agreement that the applicants had been asking him to produce, and that he was just trying to regularise things.

39. In relation to Chad moving out of the property and terminating his responsibility, the respondent agreed that this had been by agreement with him. The evidence shows that Chad had found a replacement for his room that the applicants were happy with. That proposed tenant was Jordon who was a university student. Jordon was not at the hearing to give evidence, but the Tribunal were taken to email correspondence between Jordan and the respondent. A1 told the Tribunal that Jordan had required a tenancy agreement to satisfy the requirements of his university, but that the respondent had not provided this, or any protection for a deposit. Jordon therefore had decided he could not take the room.

40. The respondent's email and 'WhatsApp' correspondence to Jordan was rude and aggressive [A127]. In one he refers to Jordan as a "*shameless liar*", accusing him of having left "*four people who trusted you in financial difficulties*" and goes on to say "*What goes around comes around and your shenanigans will catch up with you sooner or later. I intend to write to University…. Informing them of your unscrupulous conduct. Perhaps they will withdraw your offer and give it to someone with a moral compass*". The respondent could not explain in oral evidence why he had not provided Jordon with a tenancy agreement, nor why he had written to him in such terms, other than to say that Jordan did not meet his requirements.

41. The lack of a 4th tenant left the applicants in a difficult position. The respondent put pressure on them to cover the rent of the 4th room despite the fact that he had in effect stopped Jordan moving in. Further, A1 was on furlough and employment was uncertain for all the applicants during the Pandemic.

42. The respondent says that he gave an ex-gratia rent decrease. The Applicants deny this is the case stating that instead he reduced the rent back to the pre-January 2020 increase. No evidence was provided by the respondent in this regard.

43. A1 complains that the respondent gave an estate agent A1's telephone number without her permission. The respondent denies that he would have done that.

44. A1 explained to the Tribunal that an estate agent contacted her and then sent a message to respondent to say that A1 was rude and impolite. A mention of a video call viewing was mentioned, but no mention was made by the agent as to how a new tenant was expected to be accommodated by the existing occupiers during the strict rules of lockdown. The respondent responded to this by sending a "WhatsApp" message to A1 stating "*I am speechless with disbelief. I find your conduct outrageous/unacceptable. I*

am bending over backwards to help you fill the empty room, and this is how you thank me?! If this is your unhelpful, inflexible attitude then please do not expect any flexibility from me!" [A129].

45. In subsequent correspondence A1 makes it clear to the respondent that she was not comfortable being the only person contacted, that she is not the sole tenant, and that she wanted to speak to the other housemates, she denies being rude or inflexible and says "*I actually feel incredibly stressed and upset with the pressure you are putting on me as an individual, receiving messages such as that is a form of bullying. Please contact us in the email chain which Christine has kindly created. Thank you*" [A130].

46. At some point, the respondent found a new tenant for the 4th room, Francesca, who appears to have moved in on 1/06/2020. A1 complained that the respondent disclosed Francesca's personal details to A1 by sending a screen shot of her passport by WhatsApp [A144]. To this the respondent stated only that the Applicants were not aware whether Francesca had given him permission.

47. Francesca did not stay long in the property, as she reported to A1 that she was not happy with the respondent's attitude towards her, and within a month she too had left. In response the respondent stated that Francesca had been unhappy because Chad had left the room in an untidy state.

48. The applicants complained that the smoke alarm was not working and had only identified this defect when one of them smelt burning from her 2nd floor room and went down to the kitchen to find smoke coming from the toaster and no alarm going off. The respondent says that the smoke alarm was working, and in an attempt to demonstrate that fact that he sought to admit the gas safety certificate to the Tribunal at the lunch break on the day of the hearing. It was pointed out to him that smoke alarms were not mentioned on that certificate.

The respondent's grounds for opposing this application

49. The respondent raises the following grounds:
    (a) That he has a reasonable excuse for not having applied for an HMO licence. This is based on advice obtained over the telephone from an HMO specialist. The respondent relies on the specialist's advice that he would be unsuccessful in an application for a licence because of the ongoing leak. That leak being the responsibility of the freeholder, the Council, to remedy. He provided no documentary evidence in relation to this advice upon which he seeks to rely, nor was any mention of who the adviser was.
    (b) He asserts that the leak that was the responsibility of council had been ongoing since 2014, and this is the reason for a lack of HMO licence from 2015 until 14/06/2020. He seems to rely on a letter from the Council and various emails which he says demonstrate the length of time he had a leak. The letter on which he relies to demonstrate that there was a substantial leak since 2014 is a letter

dated 02/07/2019 [R20/28], in particular paragraph 4 stating "*As I have not been able to discuss these works with anyone I am unable to say for sure whether the area experiencing water ingress was a result of the pointing not being redone or whether in 5 years it was possible for new vegetation growth to cause this issue. Despite this, had the walls not been repointed, then the current issues could potentially be far worse*" [R21/28].

(c) That once the applicants moved out and his decorators were able to gain access and decorate, and the fuse board was replaced, he was able to apply for and obtain an HMO licence almost immediately, which he says demonstrates that the property would have been licensable other than decoration and fuse board.

(d) that it is unfair that the applicants be entitled to have lived at the property rent free purely because he failed to obtain an HMO Licence, when they lived in a property that they did not find fault with and chose to remain in.

50. In relation to the problems with the property for which the Council have confirmed that they will not recharge him, there is no documentary or even oral evidence of the identity of an HMO specialist upon whose advice the respondent seeks to rely. There is no evidence of the severity of damp or leaks into the property, either in a report or photos from him.

51. None of the applicants mentioned in oral evidence that damp affected the property. The only mention was in A3's witness statement in which she says "*there were a couple of leaks, issues with damp, draft from windows. The carpet was filthy and the freezer would need frequent defrosting. There wasn't fire doors* (sic*) on the bedrooms and we would frequently run out of hot water. The upstairs shower was broken for several months from around Feb-may/June 2020* [A152].

52. None of the photographs included in the Applicants bundle demonstrate severe damp [A112-115].

53. Despite the respondent's insistence that the property was in such poor condition because of the Council freeholder's alleged negligence, he nevertheless sought to increase the rent by 3% in December 2019. This was at a time when according to him, he was advised that the property was in such poor condition that he would be unable to obtain an HMO licence. Nor had the respondent attempted to apply for a temporary exemption because, he says, he was not aware of this being an option as his HMO specialist had not advised him of that option. Nor had the respondent considered letting the property in a manner that would not attract the necessity for an HMO licence.

54. In terms of the respondent's financial circumstances, the respondent provided no evidence, other than confirming in oral evidence that he was previously a banker in an international bank for 28 years and that he owns 5 investment properties in London. He confirmed he had been a landlord for 22-23 years. The respondent also stated that he was involved with the Council's leaseholder organisation, and that he was a lead member.

FINDINGS

55. The Tribunal finds that the respondent landlord had control of the property and failed to apply for the requisite HMO licence until 14/06/2020.

56. The respondent did not have a reasonable excuse for not making an application. Nor did he apply for an exemption.

57. A1 paid rent of £7,120.00 for the period 14/07/2019-13/06/2020.

58. A2 paid rent of £7,025 for the period 14/07/2019-13/06/2020.

59. A3 paid rent of £6,435 for the period 20/07/2019-13/06/2020.

60. The Tribunal found beyond reasonable doubt that the respondent was in breach of his requirement to licence the property under the HMO licensing schemes managed by the Council. The requirement for additional licencing having been introduced Borough wide in Camden from 08/12/2015. The respondent admits he had not applied for a licence at any time prior to 14/06/2020.

61. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

62. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

63. There is no evidence to demonstrate that the landlord has been prosecuted.

64. The Tribunal reject the respondent's assertions that the applicants' conduct was poor. The applicants took occupation and took on the responsibilities of the 2018 tenancy agreement with his permission. Nor did the applicants obstruct him from inspecting. They merely asked for 24 hours' notice.

65. He has asserted throughout that the applicants had sublet contrary to the terms of the lease. This is not made out. He further asserts that the applicants were in some way illegally occupying the property because the original tenancy agreement had expired, although the tenancy had become a statutory periodic one. He alleges the applicants refused access to his decorators during the difficult period spanning the Covid-19 pandemic and complains that although he allowed them to curtail their tenancy agreement on the basis that the decorators be allowed in during the last few weeks of their occupation, that they failed to do so. This is not made

out. He failed to assert that any rent was due or owing by the applicants for the relevant period.

66. The Tribunal finds that the respondent showed poor conduct in relation to his responsibilities as a landlord and his behaviour towards the applicants as follows: -

a. The respondent has failed to comply with the HMO licencing requirements and his duties as landlord since 2015, despite his knowledge of these requirements.

b. He has sought during these proceedings to obfuscate his failure to comply with his responsibilities, by attempting to rely on excuses which are unsupported by evidence:

    (i) Advice from an HMO specialist, from whom he provided no evidence
    (ii) Failure of the Council as freeholder to remedy a leak into the property, with no evidence of the claimed severity of that leak having been produced other than a letter and some emails that do not support the severity claimed. Indeed, the only photographic evidence produced of the property was from the applicants which does not demonstrate any dampness.

c. Email correspondence from the respondent to the tenant applicants was aggressive and bullying in tone. There is also evidence of aggressive and threatening language in an email to a prospective tenant (Jordan), and to a tenant that moved in for a very short period and then moved out again because of the respondent's behaviour (Francesca).

d. The respondent inspected the applicants' personal rooms without them being present, having given them insufficient notice to inspect the property and inspecting at a time when they were out at work, making them feel very uncomfortable and insecure.

e. There was evidence that the smoke alarm did not work

67. The only evidence provided by the respondent in relation to his financial circumstances was that he owns 5 investment/rental properties and had been a landlord for approximately 22 years. The only rental property that he owns that requires an HMO licence is the property subject to these proceedings. The respondent further explained that he had previously been a banker in an international bank. This indicated to the Tribunal that the respondent does not have restricted financial resources and no deductions are made from the award under this heading.

68. In relation to utilities, these were paid directly by the tenant applicants and so no deduction from the award is made in this respect

69. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the evidence of the landlord's conduct, as well as principles set out in Williams v Parmer & Ors (2021) UKUT 244 (LC), We consider that a fair award should be made to the Applicants in the sum of 80% of the total amount of rent paid for the period. Accordingly, we find that an RRO should be made against the respondent in the sum of £16,464 which should be paid to the Applicants in the following proportions:

(i) To Holly-Marie Van Krinks (A1) the sum of £5,696.00
(ii) To Christine Schneider (A2) the sum of £5,620.00
(iii) To Simone John (A3) the sum of £5,148.00

70. The Respondent is also ordered to repay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Judge D. Brandler **Date:** 18th February 2022

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) 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.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

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

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 **Making of rent repayment order**

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 **Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
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 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.