



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

Case references : (1) LON/00AS/HMF/2021/0224;
and
(2) LON/00AS/HMF/2021/0242

HMCTS code : V: VIDEO

Property : 52 Cowley Road, Uxbridge, UB8 2LU.

Applicants : (1) Jakub Adamiec and Mrs. Pilar Vicky Retuerto Sanchez De Adamiec
(2) Stephen Thomas John Austin and Christine Wenham

Representatives : (1) Express solicitors, Ms L Davies
(2) Represent Law Ltd, Ms A Hoxha

Respondents : (1) Phillip Anthony Joseph
(2) Phillip Anthony Joseph and Lavender Sky Limited

Representative : Mr Joseph represented himself

Type of application : **Application for a Rent Repayment Order by tenants**
Sections 40, 41, 42, 43 and 45 Housing and Planning Act 2016.

Tribunal members : **Judge Pittaway**
Mr T Sennett FCIEH
Mr N Miller

Date of Hearing : 22 February 2022

Date of decision : 28 February 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were in joint bundle provided by the applicants of 132 pages, a skeleton argument provided by Ms Hoxha (6 pages) and a bundle of authorities. The respondents had not provided any bundle.

At the hearing Ms Davies of Express Solicitors represented Mr and Mrs Adamiec (the '**First Applicants**') and Ms Hoxha of Represent Law Ltd represented Mr Austin and Ms Wenham (the '**Second Applicants**'). Mr Joseph represented himself and no one represented Lavender Sky Limited.

The tribunal heard evidence from Mr and Mrs Adamiec and from Ms Wenham. There was also witness statements from Mr Austin and Mr Clark Barrett, a director and paralegal of Represent Law Ltd in the bundle.

The tribunal heard submissions from Ms Hoxha and Ms Davies on behalf of the applicants and from Mr Joseph. Ms Hoxha made submissions on behalf of the Second Respondents which Ms Davies endorsed and added to in relation to the First Respondents.

Decisions of the Tribunal

- 1. The Tribunal makes a Rent Repayment Order in favour of the First Applicants against Mr Joseph in the sum of £7,776.**
- 2. The Tribunal makes no Rent Repayment Order in favour of the Second Applicants.**

The background

- 3. The Tribunal received an application dated 21 September 2021 from the First Applicants and an application dated 4 October 2021 from the Second Applicants, both under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") each for a rent repayment order ("**RRO**") in respect of 52 Cowley Road, Uxbridge, Mix UB8 2LU. ("**the Property**").**
- 4. On 14 October 2021 the Tribunal issued Directions. The Directions provided for the two applications to be heard together as they relate to the same property. The Directions provided for the Applicants to provide a joint bundle to the Tribunal by 15 November 2021, and for the Respondents to provide a bundle to the Tribunal by 10 December 2021.**
- 5. The Applicants provided a bundle as directed. The Respondents provided no bundle .**

The Issues

6. The issues before the tribunal to determine were
- Against whom should any RRO be made?
 - Were the agreements with the applicants correctly designated ‘Lodger Agreements’? and was the form of agreement relevant to the applications?
 - Was offence committed?
 - If an offence was committed did the person committing the offence have a reasonable excuse for committing an offence under section 72(5) of the Housing Act 2004 (the ‘2004 Act’)
 - The amount of RRO that can be ordered under section 44(3) of the 2016 Act.
 - Any relevant conduct of the landlord, the landlord’s financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

The Property

7. The Property is described in the first application as a house with five bedrooms, 5 bathrooms with two further reception rooms converted into bedrooms. In the second application it is described as a ten bedroom property. During the course of the hearing the tribunal heard evidence that the property had seven bedrooms, four of which had ensuite bathroom facilities. There was a shared bathroom on the middle floor.]
8. No party requested an inspection and the tribunal did not consider that one was necessary.
9. The table below sets out the sums claimed by the respective applicants of the respective respondents in their respective applications, as corrected at the hearing;

Applicant	Respondent	Period	Rent claimed
Jakub Adamiec and Mrs. Pilar Vicky Retuerto Sanchez De Adamiec	Phillip Anthony Joseph	31 August 2019 to 30 September 2020, corrected at the hearing to 1 October 2019 to 30 September	£8,640

		2020.	
Stephen Thomas John Austin and Christine Wenham	Philip Anthony Joseph and Lavender Sky Ltd	October 2019 to October 2020 Corrected at the hearing to period from November 2019 to September 2020.	£6,600. Corrected at the hearing to £5,500 less an unspecified sum of Universal Credit.

10. The relevant local housing authority is Hillingdon Borough Council.
11. The grounds of application in relation to the Second Application state that the property was licensed as an HMO from 12 March 2018 for five years, and that no new application to license the property was received by Hillingdon B C until 19 April 2021.
12. The bundle contains official copies of the freehold title of the property which show Mr Joseph to be the registered proprietor.
13. The bundle contains unsigned copies of ‘Lodger Agreements’. One is dated 1 July 2018 and is stated to be between ‘Philip Joseph of the Property’ as owner and Jakub Pawel Adamiec as lodger. It is for a term of twelve months at a rent of £750 per month (inclusive of all bills). The other is dated 25/11/201 (sic) made between Philip Joseph as Owner and Christine Wenham and Stephen Austin. It is for a term of twelve months from an unspecified start date.

Evidence and submissions

Against whom should any RRO be made?

14. In his witness statement Mr Adamiec stated that Mr Joseph was the landlord of himself and his wife throughout their occupation of the Property which started in 2014.
15. On being questioned by Mr Joseph Mr Adamiec confirmed that he had always paid the rent to the same bank account, which from the evidence in the bundle was in the name of Lavender Sky Ltd.
16. The witness statements of both Mr Austin and Ms Wenham refer to the landlord being Mr Joseph. The evidence of rent payments made by them refer to monies having been sent to Lavender Sky Limited.

17. The Second Applicants' grounds of application state that Mr Joseph is the registered proprietor of the property and at all material times the Second Applicants' landlord. Lavender Sky Ltd is a company owned and operated by Mr Joseph. The Second Applicants deny Mr Joseph's assertion that Lavender Sky Ltd was in reality the Second Applicants' landlord. The bundle contains copies of the registered title for the freehold of the property showing the registered proprietor to be Mr Joseph.
18. Mr Austin's witness statement states that his landlord was Mr Joseph, and that he did not live at the property until about August 2020.
19. Both Mr Adamiec and Ms Wenham referred to Mr Joseph living at the property from time to time and on being questioned by the Tribunal Mr Joseph confirmed that this was his only property. He explained that Lavender Sky Ltd was responsible for handling the financial side of the property while he was the owner.
20. The bundle contained undated Companies House information which showed that Mr Joseph was the only director of Lavender Sky Limited. During his submissions Mr Joseph stated that he had ceased to be a director of that company in September 2020.
21. Mr Joseph submitted that the correct landlord under the lodger agreements should be Lavender Sky Limited and that the unsigned Lodger Agreements in the bundle must have been altered as the agreements would normally have referred to Lavender Sky Limited.

The Lodger Agreements

22. Ms Hoxha in her skeleton argument submitted that section 56 of the 2016 Act defines a tenancy as including a licence.
23. Ms Hoxha also submitted that the fact that Mr Joseph had described the agreements as Lodger Agreements was relevant to his conduct for the purposes of section 44(4) of the 2016 Act.

Was an offence committed?

24. The witness statement of Mr Barrett exhibits e mails from Miss Cobbing, a Private Sector Housing Standard Officer in the Residents Services in the London Borough of Hillingdon confirming that the Property was licensed as a mandatory HMO for five years until 11 March 2018 and that no new application was received until 19 April 2021..
25. The Tribunal heard evidence from Mr Adamiec that during the relevant period (31 August 2019 to 30 September 2020) for the First Applicants at least seven people occupied the Property. Mr Adamiec's statement referred to Mr Austin

and Ms Wenham (and Mr Cope and Ms Tigar) having moved out of the Property before he and his wife did. Mr Adamiec's statement stated that two of the rooms were occupied by Ms Paula Pereira and Mr Joao Pereira (identified by him as bedroom 6) and by Paolo Pereira (identified by him as bedroom 3). Both he and Ms Wenham believed Paolo to be the son of Paula and Joao Pereira. Mr Joseph questioned whether Mr Joao Pereira had been in occupation but without offering any evidence to substantiate his allegation that he may not have been in occupation.

26. Mr Joseph questioned Mr Adamiec as to why the Lodger Agreement only referred to him as occupying his room and why permission had not been sought for Mrs Adamiec also to occupy it. In response Mr Adamiec stated that Mr Joseph had been aware throughout his occupation that the room was going to be shared with his wife, referring the Tribunal to text messages which referred to both of them.
27. Mrs Adamiec stated in her witness statement that she joined her husband in 2014, at which time he was occupying the sixth bedroom on the top floor. When room 7 became available they moved into that room. The agreement with Mr Joseph was in the sole name of Mr Adamiec but he informed the landlord that Mrs Adamiec would also be living there and she corresponded with the First Respondent. The rent was paid from a bank account which was initially in Mr Adamiec's name but subsequently became a joint account.
28. During his submissions Mr Joseph confirmed that the HMO licence which expired in 2018 had been in his name and that he had applied for the new licence in April 2021 in his name. He also accepted that an offence had been committed in the period during which there was no HMO licence for the Property.
29. Ms Wenham confirmed at the hearing that she and Mr Austin had moved out of the property in September 2020. Invited to do so by the Tribunal Ms Hoxha was unable to make submissions as to the effect of section 41(2) on the Second Respondents' application.

Reasonable excuse

30. Mr Joseph submitted that if he had committed an offence he had a reasonable excuse, in that he was unaware that the HMO licence had expired, that he thought that Lavender Sky Ltd would apply for the licence and by reason of extenuating personal circumstances.
31. Ms Hoxha submitted that the Respondent had not pleaded any reasonable excuse and that none had been provided.

Amount of the RRO

32. Mr Adamiec gave evidence that during their relevant period there was no written agreement evidencing the basis of his and his wife's occupation, the Lodger Agreement in the bundle having expired before the relevant period. During the relevant period he and his wife made monthly payments of £720 to the First Respondent. This was a reduction from the rent of £750 per month referred to in the Lodger Agreement in the bundle because it had been agreed that this should be reduced as Mr Joseph had installed a pre-paid electricity meter at the property and the rent no longer included electricity.
33. The Tribunal heard evidence that Mr Joseph paid the council tax for the Property, paid for gas and water and electricity to the common parts and provided broadband. There was no evidence before the Tribunal as to the sums paid by Mr Joseph.
34. Mr Joseph questioned Mr Adamiec of his having sublet the room on two occasions in breach of the terms of the Lodger Agreement. Mr Adamiec explained that this had been done twice, once in 2016 and once in 2019. Mr Adamiec confirmed that he and his wife had lived in the Property as their only home and had been there during the whole of the relevant period.
35. Mr Joseph confirmed to the Tribunal that he had never been convicted of a relevant offence for the purposes of the 2016 Act.
36. Ms Hoxha referred the Tribunal to the decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) ("**Vadamalayan**") as authority for the proposition that when calculating any RRO the starting point is the total rent paid during the relevant period. Ms Hoxha then referred the Tribunal to section 44(4) of the 2016 Act which requires the Tribunal, when determining the amount, in particular to 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 the Chapter of the 2016 Act applies.
37. On conduct, Ms Hoxha submitted that Mr Joseph's using Lodger Agreements rather than tenancy agreements and submitting that Lavender Sky Limited was the actual landlord was evidence of poor conduct.
38. Ms Davies asked the Tribunal to make an order in favour of the First Respondents in the full amount of the rent that they had paid, £8,460. Ms Davies has submitted that the tribunal should ignore the utilities paid for by Mr Joseph because there is no evidence before the Tribunal as to the sums involved.

The tribunal's decision and reasons

- 39.** The tribunal has had regard to the witness statements in the bundle, the submissions made at the hearing and the decisions referred to during the Hearing in reaching its decision.

The Second Applicants

- 40.** The Tribunal find, on the evidence of both Mr Adamiec and Ms Wenham, that Mr Austin and Ms Wenham left the property during September 2020. The Second Respondents' application to the Tribunal is dated 4 October 2021. By section 41(2) of the 2016 Act a tenant may only apply for a rent repayment order if the offence was committed during a time when the Property was let to the tenant and the offence was committed in the period of 12 months ending on the day on which the application was made. The Second Respondents' application was made more than twelve months after they vacated the Property and the Tribunal therefore are unable to consider their application.

Against whom should any RRO be made?

- 41.** Mr Joseph had provided no evidence to substantiate his submission that the Lodger Agreements in the bundles had been altered to delete reference to Lavender Sky Ltd. That rent was paid by the applicants to Lavender Sky Limited is not by itself sufficient evidence that it was the landlord of the property.
- 42.** On the evidence before it, including that the HMO licence which expired in March 2018 was in the name of Mr Joseph, the Tribunal finds that the relevant respondent for the purposes of any RRO that it might make is Mr Joseph.

The Lodger Agreements

- 43.** The Tribunal note that it heard evidence from Mr Adamiec that the individual rooms at the Property had locks on their doors, shared a kitchen and each room had its own electrical meter, installed by Mr Joseph. It heard submissions from Ms Hoxha as to exclusive possession denoting a tenancy rather than a licence. However, section 56 of the 2016 Act makes it unnecessary for the Tribunal to determine whether the legal status of the occupants was as tenants or licensees.

Was an offence committed?

- 44.** In light of Mr Joseph's admission that an offence had been committed it is not necessary for the Tribunal to consider whether the occupation of the property during the relevant period was such as to necessitate a mandatory HMO

Licence. The tribunal would however have accepted the evidence of Mr and Mrs Adamiec, and Ms Wenham that during the respective relevant periods the occupation of the property was such as to fulfil the description of an HMO set out in section 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 in that it was occupied by more than five persons living in two or more separate households and as such would have required a mandatory HMO licence.

Reasonable excuse

45. The Tribunal sympathise with the difficult personal circumstances in which Mr Joseph may have found himself in the relevant period but note that the property remained without an HMO licence for over two years. The Tribunal might have accepted that failure to apply for a licence for a short period of time might afford Mr Joseph a reasonable excuse but find that failure to do so for over two years is not reasonable. Mr Joseph knew that a licence was required because he had previously applied for one, and made the new application in April 2021. Mr Joseph told the Tribunal that he ensured all necessary checks were carried out to the Property, and as a landlord these should have included a periodic check on the status of the HMO licence. The Tribunal do not accept that the responsibility to apply lay with Lavender Sky Limited, in circumstances where Mr Joseph had undertaken the responsibility previously.
46. The Tribunal do not find that Mr Joseph had a reasonable excuse for committing the offence

Amount of RRO

47. The tribunal agree with Ms Hoxha's submission that following *Vadamalayan*, the starting point for determining the amount of the RRO is the rent paid. The decision in the Upper Tribunal limited possible deductions from the maximum amount to utilities paid for by the landlord. Paragraph 16 of *Vadamalayan* states, 'In cases where the landlord pays for utilities, as he did in *Parker v Waller*, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of a rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.'
48. The Tribunal accept that there is no evidence before it as to the cost of the utilities paid for by Mr Joseph. It is however mindful of what is said in paragraph 16 of *Vadamalayan*. It therefore considers it appropriate to make an allowance in the amount of the RRO to reflect that the First Respondents enjoyed the use of utilities paid for by Mr Joseph. In the absence of any

evidence as to what should be deducted it considers it appropriate to make a deduction of 10% from the total amount of rent paid by the First Respondents.

- 49.** The Tribunal find that that Mr Joseph's grant of Lodger Agreements, and using Lavender Sky Limited to collect the rent was not poor conduct such as to affect the amount of the RRO.
- 50.** The Tribunal find that the conduct of Mr and Mrs Adamiec on which they heard evidence was not such as to reduce the amount of the RRO. Mr Joseph submits that the occupation of the room by Mrs Adamiec was outside the terms of the Lodger Agreement. If Mrs Adamiec's occupation was a breach of the various Lodger Agreements that Mr Adamiec had entered into the breach appears to have been waived by Mr Joseph, who had accepted rent knowing of her occupation. The two sub lettings to which Mr Joseph referred are outside the relevant period of the application.
- 51.** Otherwise there were no submissions as to poor conduct by either party. No adjustment is therefore made for the conduct of either party.
- 52.** There was no evidence before the Tribunal as to the financial circumstances of Mr Joseph and so it is unable to take these into account.
- 53.** Mr Joseph has no conviction.
- 54.** Accordingly no further adjustment is made to the RRO by reason of the factors referred to in section 44(4) of the 2016 Act.
- 55. Costs**
- 56.** Ms Hoxha raised the possibility of making an application for costs under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 but agreed that it would be best to delay a consideration of this until after this decision is issued.
- 57.** If any party is considering whether it is appropriate to make such an application the Tribunal would remind him/her of the approach to such an application that the Tribunal will adopt in light of the decision in *Willow Court Management Co(1985) Ltd v Alexander* [2016] UKUT 290 (LC)

Name: Judge Pittaway

Date: 28 February 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

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.

(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.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);

(b) it meets the conditions in subsection (3) (“the self-contained flat test”);

(c) it meets the conditions in subsection (4) (“the converted building test”);

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if—

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
- (3) A part of a building meets the self-contained flat test if—
- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4) A building or a part of a building meets the converted building test if—
- (a) it is a converted building;
- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
- (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6) The appropriate national authority may by regulations—
- (a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
- (b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
- (c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8) In this section—
- “basic amenities” means—
 - (a) a toilet,
 - (b) personal washing facilities, or
 - (c) cooking facilities;

- “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “self-contained flat” means a separate set of premises (whether or not on the same floor)—
 - (a) which forms part of a building;
 - (b) either the whole or a material part of which lies above or below some other part of the building; and
 - (c) in which all three basic amenities are available for the exclusive use of its occupants.

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.

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);

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.

<i>If the order is made on the ground that the landlord has</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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committed

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.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

Description of HMOs prescribed by the Secretary of State

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.