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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/HMG/2021/0032**
Property	**:**	**Basement Flat, 184 North End Road, London W14 9NX.**
Applicants	**:**	**Nicole Razak** **Ilse Paridaans**
Representative	**:**	**Ms Clara Sherratt; Justice for Tenants**
Respondent	**:**	**Mojharal Mujib Choudhury.**
Representative	**:**	**In person**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mr Stephen Mason FRICS**
Venue and date of hearing	**:**	**By a video hearing on 10 February 2022**
Date of decision	**:**	**14 February 2022**

DECISION

Decision of the tribunal

(1) The Tribunal finds that a rent repayment order be made in the sum set out below in favour of the applicants, the Tribunal being satisfied beyond reasonable doubt that the respondent has committed an offence pursuant to s.95(1) of the Housing Act 2004, namely that a person commits an offence if he is a person having control of or

managing a house which is required to be licensed under Part three of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

(2) The amount of the rent repayment order is £16,800 for the rent paid relating to the period 14 February 2020 and 13 February 2021.

Reasons for the tribunal's decision

Introduction

1. The applicants made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as the **Basement Flat, 184 North End Road, London W14 9NX**. The tenant seeks a Rent Repayment Order (RRO) for the total sum of £18,000 (12 months at £1,500 per month). This appears to cover part of the duration of the tenancy of the Property, from 14 February 2020 to 13 February 2021. This property is a one-bedroom self-contained basement flat in a converted house in the London Borough of Hammersmith and Fulham.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.

3. The hearing of the application took place on Thursday 10 February 2022 by a video hearing with the applicants attending personally and represented by Justice for Tenants and the respondent appearing in person.

4. Both parties provided extensive trial bundles to assist the Tribunal at the time of the hearing. These bundles consisted of copy deeds documents, leases, email letters and other relevant copy documents relating to this dispute.

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

6. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE – used for a hearing that is held entirely on the Ministry of Justice CVP platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were

referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it electronic/digital trial bundles of documents prepared by the applicants and the respondent, both in accordance with previous directions.

Background and the law

7. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the Tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that a person/company has committed an offence described in Part three of the Act and in that regard section 95 of the 2004 Act states: -

> *95 Offences in relation to licensing of houses under this Part*
>
> *(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.*

8. Every property to which Part 3 of the Act applies must be licensed (s.85(1) Housing Act 2004). As stated at s.85 (1) of the 2004 Act:

> *"(1) Every Part 3 house must be licensed under this Part unless—*
>
> *(a) it is an HMO to which Part 2 applies (see section 55(2)), or*
>
> *(b) a temporary exemption notice is in force in relation to it under section 86, or*
>
> *themselves a management order is in force in relation to it under Chapter 1 or 2 of Part 4."*

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

> *"[…] the person who, being an owner or lessee of the premises —*
>
> *receives (whether directly or through an agent or trustee) rents or other payments from—*

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

(ii) in the case of a house to which Part 3 applies (see section 79(2)),

persons who are in occupation as tenants or licensees of parts of

the premises, or of the whole of the premises;

would so receive those rents or other payments but for having entered into an arrangement […] with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments."

10. Under section 41 (2) (a) and (b) of the 2016 Act a tenant may apply for a rent repayment order only if (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made. The application to the Tribunal was made on 12 August 2021. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

11. The tenants have originally claimed an RRO for the total sum of £18,000 (12 months at £1,500 per month). This appears to cover part of the duration of their tenancy of the Property, from 14 February 2020 to 13 February 2021. The applicants also supplied to the Tribunal proof of payment shown in the trial bundle. The Tribunal were satisfied that these payments had indeed be made.

The Offence

12. It was noted and confirmed by email that a license in respect of the property had been applied for on behalf of the respondent on 12 August 2021 and granted on 10 September 2021. Therefore, the property was unlicensed prior to that date. The property was situated within a selective licensing area as designated by the London Borough of Hammersmith and Fulham. Therefore, the Property was previously not licensed under the Selective Licensing Scheme and was not licensed during the period of this claim. In fact, at the hearing the respondent conceded and admitted that he had not applied for a license until after the end of the claim period.

13. There being a "house" as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is

required to be licensed under Part three of the Act but is not so licensed. The respondent has therefore committed an offence under section 95 (1) of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondents were in control of an unlicensed property.

14. In the light of the above, the Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council. Therefore, the Tribunal concluded that this was an unlicensed property in relation to this application.

The tribunal's determination

15. The Tribunal then turned to quantifying the amount of the RRO. The amount of the RRO was extracted from the amount of rent paid by the applicant during the periods of occupancy as set out within the trial bundle. The amounts are set out in this decision at paragraph 1 above.

16. In deciding the amount of the rent repayment order, the Tribunal was at the outset mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the Tribunal consider an appropriate order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was not a professional landlord as he said he only owned this one property. However, he had been a landlord for over 5 years and so should have been aware of the legal requirements of licensing. As was stated in paragraph 26 of *Parker* a lessor who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional: -

> "*Paragraph (d) requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.*"

17. Having said that, when considering the amount of a rent repayment order the starting point that the Tribunal is governed by is s.44(4), which states that that the Tribunal must "in particular, take into account" three express matters, namely:

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

The Tribunal must therefore consider the conduct of the parties and the financial circumstances of the respondent. Express matter (c) was not considered as no such convictions apply so far as the respondent is concerned.

18. The Tribunal were mindful of the recent Upper Tribunal decision in *Vadamalayan v Stewart and Others* [2020] UKUT 183 (LC). In particular Judge Elizabeth Cooke said: -

> *12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.*
>
> *14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.*
>
> *53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in Parker v Waller. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. The appellant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the appellant's own*

obligations as landlord. The respondents as tenants were entitled to the items set out in the appellant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the appellant spent in meeting one obligation from what he has to pay to meet the other.

54. The appellant also wants to deduct what he had to pay by way of mortgage payments to the TSB and interest on another loan which has not been shown to relate to the property. The FTT refused to deduct the mortgage payments because the mortgage was taken out in 2016 whereas the property was purchased in 2014, so that the mortgage did not appear to have funded the purchase. The appellant says that the property was bought some years before that and that this was a re-mortgage. He did not produce evidence about that to the FTT and he could have done so. More importantly, what a landlord pays by way of mortgage repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order. The other loan has not been shown to relate to the property and I regard it as irrelevant, as did the FTT.

19. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley* (2021) UKUT 0055(LC). In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. He also noted that section 46(1) of the 2016 Act specifies particular circumstances in which the FTT must award 100% and must disregard the factors in section 44(4) in the absence of exceptional circumstances, and he expressed the view that a full assessment of the FTT's discretion ought to take section 46(1) into account. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

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

6. In this regard, I agree with the observations of the Deputy President of the Lands Tribunal, Judge Martin Rodger QC, in Ficcara v James. [2021] UKUT 0038 (LC), in which he explained the effect of the Tribunal's earlier decision in Vadamalayan v Stewart [2020] UKUT 0183 (LC). Vadamalayan is authority for the proposition that an RRO is not to be limited to the amount of the landlord's profit obtained by the unlawful activity during the period in question. It is not authority for the proposition that the maximum amount of rent is to be ordered under an RRO subject only to limited adjustment for the factors specified in s. 44(4).

43. Mr Colbey argued that the FTT was wrong to regard the amount of rent paid as any kind of starting point and that the orders should have been made on the basis of what amount was reasonable in each case. He relied on guidance to local authorities issued under Chapter 3 of Part 2 of the 2016 Act, entitled "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017. Notably, this is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. Although those are identified in connection with the question whether a local authority should take proceedings, they are factors that clearly underlie Chapter 4 of Part 2 of the 2016 Act generally.

50 I reject the argument of Mr Colbey that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

51. It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular,

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

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

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

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

Therefore, the Tribunal took this as another factor to be mindful of when calculating the amount of the RRO. In the dispute before this Tribunal, the applicant tenants had paid all their rent on time and in full.

23. Furthermore, in *Kowalek v Hassanein Limited* [2021] UKUT 143 (LC) the Deputy Chamber President Martin Rodger QC wrote

> *"Section 44(4)(a) requires the FTT to take into account the conduct of the tenant when determining the amount of an order. No limit is imposed on the type of conduct that may be considered, and no more detailed guidance is given about the significance or weight to be attributed to different types of conduct in the determination. Those questions have been left to the FTT to resolve. I can think of no reason why relevant conduct should not include the conduct of a tenant in relation to the obligations of the tenancy. Failing to pay rent without explanation (and none was offered to the FTT or on the appeal) is a serious breach of a tenant's obligations. Parliament intended that the behaviour of the parties to the tenancy towards each other should be one factor to be taken into account."*

24. The Tribunal was also mindful of this when considering the amount of the award.

25. Finally in this review of relevant case law the Tribunal noted the very recent Upper Tribunal decision of *Aytan v Moore* [2022] UKUT 27(LC) where the Upper Tribunal issued further guidance on the calculation of quantum, the amount of the award and on what might amount to a reasonable excuse. At para 38 of the decision the Upper Tribunal stated that: -

> "*We agree with the appellant that ignorance about an additional licensing scheme is as likely to be relevant to the defence as is ignorance about the fact that the property is an HMO - although neither will in itself provide a defence*."

26. And at para 40 it stated that: -

> "*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 themself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.* "

27. The Tribunal understood that the landlord had used a letting agent but he did not produce any evidence to support the proposition that the agent was contractually liable for checking whether the property needed to be licenced. In the case before this Tribunal, the Tribunal had no evidence of the involvement of an agent and while the respondent said he did not know about the selective licence scheme again the tribunal had no evidence of his due diligence in checking his legal obligations as a lessor. Ignorance is no defence. For these reasons the Tribunal cannot find any reasonable excuse on the respondent's part.

28. The Tribunal was mindful of the fact that in *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4). Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties and (b) the financial circumstances of the landlord. We will take these in turn.

29. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order. So far as the financial position of the respondent is concerned, the Tribunal was not provided with sufficient material to enable it to make an informed decision in this regard. Some information was supplied but this was there to show that the respondent made no profit on the letting. This therefore does not assist this Tribunal.

30. Our approach is for this process is based upon the *William* and *Aytan* decisions. As was said in Aytan: -

> *"…. we wish to make it clear that it is not appropriate for a tribunal to indulge in a fine-grained examination of every aspect of the parties' conduct, which would be disproportionate, nor in a detailed comparison of one landlord with another, which is unlikely to be accurate. The FTT must weigh the evidence and make a balanced decision. However, that exercise need not be a detailed forensic exercise as long as all relevant circumstances are taken into account and the outcome falls within the reasonable range of responses available to the Tribunal."*

31. In the light of the above when considering financial circumstances, the Tribunal should not consider profit, mortgage payments or reasonableness. So, the Tribunal did not take account of any of these points when coming to the amount of the rent repayment order.

32. The tribunal could see the justification for a deduction for outgoings. The gas, electricity, water and internet access were all included in the rent. There were no separate bills. The tenants had clearly benefitted from this arrangement and therefore an allowance should be made. The Tribunal considered that a sum of £100 per month was a proportionate and relevant amount making a total deduction of £1,200. The conduct of the respondent did seem to justify this allowance. The Tribunal makes no allowance for Council tax because the flat was not separately taxed. The Council tax was for all the building and was paid by the respondent for all the building.

33. Finally, we turn to the conduct of the parties. In that regard the Tribunal took the view that the primary duty of the tenant is to pay rent and the primary duty of the landlord is to provide a decent, dry, safe and easily habitable property for the tenant to quietly enjoy. The Tribunal noted that there were no rent arrears. The Tribunal also noted that there were some relevant condition issues affecting the property. It seems that the carpet in the flat may have been in a poor state. However, in the absence of any incoming or outgoing schedules of condition the Tribunal could not comment on this. However, the parties did agree that the property was affected by damp and mould that was not remedied satisfactorily.

34. The landlord should have licenced this property but did not. This is a significant factor in relation to the matter of conduct. It remains the case that this property should have been licenced and regrettably it was not. Furthermore, the landlord failed to protect the tenants' rental deposit, as well as failing to hold a Gas safety certificate or a record of electrical checks. There were also clear failings in the provision of fire safety equipment and proper fire doors. The property was clearly not in an appropriate condition and this failing on the part of the landlord must be considered in the context of conduct. Similarly, the absence of rent arrears is of consequence regarding an assessment of the conduct of the tenants. Therefore, the Tribunal accepts that these aspects of the conduct of the parties should be taken into account when considering the amount or level of the rent repayment order necessary in this case.

35. Consequently, while the Tribunal started at the 100% level of the rent it thought that there were no reductions that might be appropriate, proportionate or indeed necessary to take account of the factors in the Act so far as the respondent is concerned but a small deduction was considered appropriate given that the rent was paid inclusive of some outgoings.

36. Therefore, the Tribunal decided to reduce the RRO by £100 per month for these outgoings giving a net RRO of £16,800. This figure represents the Tribunals overall view of the circumstances that determined the amount of the rent repayment order. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £16,800

after deduction of the outgoings allowance. The order arises as a consequence of the Tribunal being satisfied beyond reasonable doubt that the respondents had committed an offence pursuant to s.95 of the Housing Act 2004, namely that a person commits an offence if he is a person/company having control of or managing a house which is required to be licensed under Part three of the 2004 Act but is not so licensed.

37. Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 N0 1169 (L.8) does allow for the refund of Tribunal fees. Rule 13(2) states that: -

> "*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*."

38. There is no requirement of unreasonableness in this regard. Therefore, in this case the Tribunal considers it appropriate and proportionate in the light of the determinations set out above that the respondent refund the Applicants' Tribunal fee payments of £300.

39. In the circumstances the tribunal determines that there be an order for the refund of the Tribunal fees in the sum of £300 pursuant to Rule 13(2).

Name:	Judge Professor Robert Abbey	Date:	14 February 2022

Annex

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

95 Offences in relation to licensing of houses under this Part

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

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

s41 Housing and Planning Act 2016

Application for rent repayment order

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

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

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

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

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

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

(b)the authority has complied with section 42.

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

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2)….
(3) The amount that the landlord may be required to repay in respect of a period must not exceed—
(a) the rent paid in respect of that period, less
(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
(4) In determining the amount the tribunal must, in particular, take into account—
(a) the conduct of the landlord and the tenant,
(b) the financial circumstances of the landlord, and
(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.