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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMK/2020/0029**
Property	**:**	**Flat 2 Mayford, Oakley Square, London NW1 1NX**
Applicants	**:**	**Willemijn Paul (1)** **Kaval Patel (2)** **Shamhethan Bhaskaran(3)** **Talvin Ramnah (4)** **Fawwaz Ahmed (5)**
Representative	**:**	**Willemijn Paul**
Respondents	**:**	**Mohammed Jewel Miah**
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 Mel Cairns MCIEH (Professional Member)**
Venue and date of hearing	**:**	**By a video hearing on 16 December 2021**
Date of decision	**:**	**22 December 2021**

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 applicant, the Tribunal being satisfied

beyond reasonable doubt that the respondent has committed an offence pursuant to s.72(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 two 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 in the sum of £40,700 for the period from 15 September 2019 to 14 August 2020 at the rate of £3,700 per month.

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 **Flat 2 Mayford, Oakley Square, London NW1 1NX**. The tenant seeks a Rent Repayment Order (RRO) for the total sum of £40,700 (11 months at £3,700 per month). This appears to cover the period of his tenancy of the Property, from 15 September 2019 to 14 August 2020. This property is described in the application to the Tribunal as a maisonette property with 5 bedrooms (one converted from an original bedroom). The property is situated in the London Borough of Camden.

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 16 December 2021 by a video hearing. The applicants were represented by Ms Paul and the respondent by himself 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 - use 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 first respondents, both in accordance with previous directions.

7. None of the applicants remain in occupation of the property. The respondent is the owner of the property as listed on its registered title.

Background and the law

8. 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 two and or three of the Act and in that regard section 72 of the 2004 Act states: -

> *(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.*

9. Section 55 of Part 2 of the Act says

1)This Part provides for HMOs to be licensed by local housing authorities where—

(a)they are HMOs to which this Part applies (see subsection (2)), and

(b)they are required to be licensed under this Part (see section 61(1)).

(2)This Part applies to the following HMOs in the case of each local housing authority—

(a)any HMO in the authority's district which falls within any prescribed description of HMO, and

(b)if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

10. The property is also potentially licensable under Part 3 of the Act. 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

(c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4."

11. 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."

12. 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 23 July 2020. 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.

13. The applicant also supplied to the Tribunal proof of payment of rent shown in the trial bundle. The Tribunal were satisfied that these payments had indeed be made.

The Offence

14. A Rent Repayment Order (RRO) is an order made by this Tribunal. An RRO is a means for tenants and former tenants living in the private rented sector to reclaim a maximum of 12 months' rent paid to a landlord. The Housing and Planning Act 2016 allows a tenant to apply for an RRO if a landlord has committed an offence or if the landlord has been convicted in court.

15. A House in multiple occupation (HMO) is a property rented out by at least 3 people who are not from 1 'household' (for example a family) but share facilities like the bathroom, toilet and kitchen. All HMOs require a license within the borough of Camden. The application must be made within 12 months of the landlord's offence. It is a criminal offence for landlords and managing agents to let out a property that is not properly licensed. Camden have an additional HMO licensing scheme that is Borough wide and applies to any property occupied by three or more individuals that is not captured by their mandatory HMO licensing. Accordingly, two schemes can apply to this property.

16. It was noted by the Tribunal and admitted by the respondent that he had not ever applied for an HMO licence during the period of the tenancy and as such during the whole period in question there was no HMO license for this property. The evidence before the Tribunal was that there were at least five people in occupation of the property constituting at least two households there being no family relationship between any of the applicants. There were in fact all students. So, there being two households with 3 or more occupants then there was an HMO to which the licensing schemes in Camden applied. Additionally, the fact of 5 residents also meant that the property fell within the mandatory licensing criteria of Part 2 of the 2004 Act. There being no license the respondent was committing an offence. The Tribunal was told that the respondent did make an application for a license once he knew of this application, i.e., in August 2020 after the tenant applicants left the property at the end of the tenancy.

17. 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 two of the Act but is not so licensed. The respondent has therefore committed an offence under section 72 (1) of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) as the respondent was in control of an unlicensed property. The Tribunal relies upon the Upper Tribunal decision in the case of *Goldsbrough and Swart v CA Property Management Ltd and Gardner* [2019] UKUT 311(LC) in making this finding.

18. 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

19. Dealing first with the matter of the statutory defence of reasonable excuse, the Tribunal noted that there were submissions in this regard by the respondent. The respondent asserted that "Yes I own the property and I'm listed as director of the Alex Crown Lettings and Estate Agents ltd, but I personally do not apply for the HMOs and this responsibility was handed to the Management Company Alex Crown, there *(sic)* made a mistake and forgot to apply for the HMO in Time due to all what was going on such as Covid-19. This was an honest mistake from the agency", and "Tenants lived happily in the flat for 11 months with no complaints it's really not fair what his tenant this is a lawyer has planned against me. They were in a WhatsApp group with a local Maintenance contractor so any issues they would contact him direct and he would resolve thing for them normally even on same day". Accordingly, the respondent asserted that his conduct was not blameworthy as the failure to licence the property was as a result of an

honest mistake. He said the "Conduct of the landlord and Management agents was outstanding." And that "I am a Good landlord with a clean heart."

20. Accordingly, the Tribunal did seek to consider if there was anything in the evidence submitted by the respondent that might amount to a reasonable excuse. However, the Tribunal was not persuaded by anything submitted to it that might amount to a reasonable excuse for not licensing the property in the proper way.

21. The Tribunal then turned to quantifying the amount of the RRO. 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 a professional landlord. He owned a couple of his own properties and was the proprietor of an estate agency from at least 2013. 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.*"

22. 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. The respondent specifically confirmed to the Tribunal that he had not been convicted of any such offence.

23. The Tribunal were mindful of the 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).*
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> *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.*

24. 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.

25. 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. The applicant tenants had paid all their rent on time and in full.

26. 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."*

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

28. 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. The tribunal could not see any justification for a deduction for any outgoing. The conduct of the respondent did not seem to justify this allowance. Furthermore, as has been noted above there were no rents missed by the applicants during the period of their tenancy.

30. 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 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 condition issues affecting the property. There were concerns regarding the absence of appropriate firefighting equipment in that the applicants said that there were no firefighting devices in the property while the applicants were in residence. There was no emergency lighting and the fire exits were inadequate and two of the rooms were too small to meet room size regulations for an HMO.

31. The Tribunal noted that the landlord was a professional landlord who had been in the property business since at least 2013. He also ran an estate agency business. With this background the failure to licence is particularly unsatisfactory. HMO licensing was introduced to enable Local Authorities to identify, monitor and improve conditions in this sector - particularly in relation to fire safety. The property indeed had a number shortcomings - including fire safety deficiencies - which licensing conditions would be expected to address. The photographs and evidence supplied by the landlord indicated knowledge of HMO licensing and we noted that some remedial works were eventually done but only after this RRO application was made and after the applicants had left the property. Therefore, the Tribunal accepts that the description of the negative aspects of the conduct of the respondent should be taken into account when considering the amount or level of the rent repayment order necessary in this case.

32. Consequently, while the Tribunal started at the full 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. Therefore, the Tribunal decided that there should be no reduction from the maximum figures set out above giving a final figure of 100% of the claim in the sum of £40,700 payable by the respondent to the applicants. 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 £40,700. The order arises as a consequence of the Tribunal being satisfied beyond reasonable doubt that the respondents had committed an offence pursuant to s.72 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 two of the 2004 Act but is not so licensed.

Name:	Judge Professor Robert Abbey	Date:	22 December 2021

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

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).

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.