



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

Case references : CAM/00KA/HMK/2019/0002

Property : 14 Kenneth Road, Luton, Beds LU2 0LE

Applicant : Tomas Prochazka

Applicant's Representative : Did not attend and was not represented

Respondent : Marco Caruso

Respondent's Representative : Did not attend and was not represented

Type of application : For a Rent Repayment Order pursuant to ss. 40-44 Housing & Planning Act 2016

Tribunal members : Mr Max Thorowgood and Ms Marina Krisko

Venue : Luton Magistrates Court

Date of Decision : 13 January 2020

DECISION

1. The application

- 1.1. By his application, received on 13th June 2019, the Applicant seeks a Rent Repayment Order in respect of the sums of £100.00 per week paid by him to his landlord, the Respondent, between 19th February 2018 and 19th February 2019.

2. The hearing on 10th October 2019

- 2.1. The matter came before the Tribunal on 10th October 2019. Neither party attended. The Applicant said expressly that he did not intend to attend and the Respondent made no contact.
- 2.2. Prior to the hearing the Tribunal ordered Luton Borough Council to disclose various documents pertaining to the status of the property as an HMO and the nature of the criminal charges pending against the Respondent. Some documents were received from the Private Housing Enforcement section of Luton Borough Council on 7th October 2019 which indicated that a number of criminal charges were pending against the Respondent. The Council also asked that we adjourn the proceedings before us pending their determination.
- 2.3. Having investigated the informations laid against the Respondent at Luton Magistrates Court in the course of our deliberations and having also been unable to ascertain whether the property was on the list of registered HMO's or not (amongst other things), we decided to adjourn the hearing pending determination of the criminal charges and made the following order:

1. The determination of the application be adjourned to abide the determination of the criminal prosecution brought against the Respondent in respect of this property at the hearing fixed for 22nd October 2019.

2. Unless either party gives notice in writing to the Tribunal and the other party requiring a further hearing of this matter by 4 pm on [21 days] the Tribunal shall make its final determination in respect of this matter on the papers without further hearing.

3. The Applicant shall provide evidence of his payment of rent since 19th February 2019 (that being the last date for which he has so far provided evidence) by 4 pm 25 October 2019.

We also wrote to Luton Borough Council asking that it provide the following further information and documents:

- Any Improvement Notice(s) served by the Luton Borough Council upon Mr Caruso in respect of 14 Kenneth Road, Luton;
- Any information laid by Luton Borough Council against Mr Caruso in respect of an offence contrary to the Housing Act 2004 in respect of 14 Kenneth Road, Luton;
- Any memorandum of the conviction of Mr Caruso in respect of any such offence; and
- Any written statements or other documentary evidence relied upon by the Council in support of its prosecution of Mr Caruso in respect of any such offences.
- The improvement notice which expired on 4th September 2018 in respect of which the prosecution is made; and
- Any HMO Licence in force in respect of the property at any point since February 2018.

3. Events since the hearing

3.1. On 30th October 2019 the Applicant confirmed that he had no further evidence of his payment of rent since 19th February 2019.

3.2. On 5th November 2019 the Respondent pleaded guilty to the following charges relating to the subject property:

3.2.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

3.2.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges were withdrawn.

3.3. The Respondent was represented at that hearing at which the Council submitted that the offences were serious with the potential for serious

harm to result and a high degree of culpability on the part of the Respondent. The matter was adjourned for sentencing on 13th December 2019.

3.4. At the hearing on 13th December 2019 the Respondent was sentenced to:

3.4.1. To pay a fine of £27,000.00

3.4.2. To pay a victims' surcharge of £170.00

3.4.3. To pay the Council's costs of 848.70.

4. The applicable law

4.1. The relevant legislation is set out in ss. 40-44 of the Housing & Planning Act 2016 which is set out in Appendix 2 below.

4.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a tenant if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004 and that the offence relates to housing let to the tenant within 12 months of the date on which the application was made.

4.3. The maximum amount of that order is fixed by s. 44 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the rent paid during a period not exceeding 12 months whilst the Landlord was committing the offence.

4.4. In considering the amount of the order we are bound to consider:

4.4.1. the conduct of the landlord and the tenant,

4.4.2. the financial circumstances of the landlord, and

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

4.5. We are also bound to deduct from any sums awarded any relevant award of Universal Credit in respect of the rent from the amount to be repaid.

5. Our decision

- 5.1. We are satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.
- 5.2. We are further satisfied, on the basis of the information provided to us by Mr Mealey on behalf of the Council, that the property has never been licensed for use as an HMO.
- 5.3. We are further still satisfied that the Applicant paid rent to the Respondent in respect of the property whilst it was in use as an unlicensed HMO throughout the period from February 2018 to February 2019 in respect of which he seeks a rent repayment order.
- 5.4. The Applicant has presented evidence that he paid rent at the rate of £100.00 per week from 25th October 2017 until 19th February 2019. He has declined to present any evidence that he has paid rent since. There is no evidence that any part of that rent derived from a relevant award of Universal Credit.
- 5.5. So far as the conduct of the Applicant is concerned, he has been reluctant to engage with these proceedings beyond making this application which we are considering. He declined to attend the hearing and refused to provide evidence that he has paid rent to the Respondent since February 2019.
- 5.6. The Respondent has either failed or refused to engage with these proceedings. He did eventually engage with the criminal prosecution but it is apparent from the report prepared by the Council in respect of its inspection of the premises on 6th March 2019 and the witness statement of Brian McCrossan made for the purposes of the criminal prosecution that the Council's operatives' efforts to meet with Mr Caruso for the purpose of encouraging him to comply with the improvement notices served by the Council met with no success. Mr Caruso appears to have been both oblivious to the requirements of the regulations and to the state of the property more generally and careless as to the consequences. That is plainly a matter for grave concern given that Mr Caruso owns and operates at least two other properties as unlicensed HMO's (12 Kenneth Road and 35 Axe Close).
- 5.7. We know nothing about the Respondent's means because he has told us nothing, we are therefore bound to assume that they have no material bearing on the order which we make.

- 5.8. Despite the seriousness of the Respondent's breaches of the law concerning the management of the subject property, we consider that we are also bound to have regard to the Applicant's failure to engage with this application, particularly his failure to file evidence that he has paid rent since 19th February 2019. Therefore, given that the Respondent has also been the subject of a criminal prosecution as a result of which he faces criminal sanctions we order that he should repay 9 months' rent to the Applicant, namely £3,900.00 on or before 5 pm on **10 February 2020**.
- 5.9. We should add of course that nothing in this decision affects the Applicant's obligation to pay rent in respect of any period which is not the subject of this decision or his ability to apply for Rent Repayment Order in respect of those periods.

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
- (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<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
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).

Application for rent repayment order

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if—
 - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
 - (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Making of rent repayment order

43 Making of rent repayment order

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

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

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

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

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 committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

- (a) the rent 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.

Enforcement of rent repayment order

47 Enforcement of rent repayment orders

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.



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- 2.2. Prior to the hearing the Tribunal ordered Luton Borough Council to disclose various documents pertaining to the status of the property as an HMO and the nature of the criminal charges pending against the Respondent. Some documents were received from the Private Housing Enforcement section of Luton Borough Council on 7th October 2019 which indicated that a number of criminal charges were pending against the Respondent. The Council also asked that we adjourn the proceedings before us pending their determination.
- 2.3. Having investigated the informations laid against the Respondent at Luton Magistrates Court in the course of our deliberations and having also been unable to ascertain whether the property was on the list of registered HMO's or not (amongst other things), we decided to adjourn the hearing pending determination of the criminal charges and made the following order:

1. The determination of the application be adjourned to abide the determination of the criminal prosecution brought against the Respondent in respect of this property at the hearing fixed for 22nd October 2019.

2. Unless either party gives notice in writing to the Tribunal and the other party requiring a further hearing of this matter by 4 pm on [21 days] the Tribunal shall make its final determination in respect of this matter on the papers without further hearing.

3. The Applicant shall provide evidence of his payment of rent since 19th February 2019 (that being the last date for which he has so far provided evidence) by 4 pm 25 October 2019.

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- Any written statements or other documentary evidence relied upon by the Council in support of its prosecution of Mr Caruso in respect of any such offences.
- The improvement notice which expired on 4th September 2018 in respect of which the prosecution is made; and
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3. Events since the hearing

3.1. On 30th October 2019 the Applicant confirmed that he had no further evidence of his payment of rent since 19th February 2019.

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4.3. The maximum amount of that order is fixed by s. 44 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the rent paid during a period not exceeding 12 months whilst the Landlord was committing the offence.

4.4. In considering the amount of the order we are bound to consider:

4.4.1. the conduct of the landlord and the tenant,

4.4.2. the financial circumstances of the landlord, and

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

4.5. We are also bound to deduct from any sums awarded any relevant award of Universal Credit in respect of the rent from the amount to be repaid.

5. Our decision

- 5.1. We are satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.
- 5.2. We are further satisfied, on the basis of the information provided to us by Mr Mealey on behalf of the Council, that the property has never been licensed for use as an HMO.
- 5.3. We are further still satisfied that the Applicant paid rent to the Respondent in respect of the property whilst it was in use as an unlicensed HMO throughout the period from February 2018 to February 2019 in respect of which he seeks a rent repayment order.
- 5.4. The Applicant has presented evidence that he paid rent at the rate of £100.00 per week from 25th October 2017 until 19th February 2019. He has declined to present any evidence that he has paid rent since. There is no evidence that any part of that rent derived from a relevant award of Universal Credit.
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1. The determination of the application be adjourned to abide the determination of the criminal prosecution brought against the Respondent in respect of this property at the hearing fixed for 22nd October 2019.

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3. The Applicant shall provide evidence of his payment of rent since 19th February 2019 (that being the last date for which he has so far provided evidence) by 4 pm 25 October 2019.

We also wrote to Luton Borough Council asking that it provide the following further information and documents:

- Any Improvement Notice(s) served by the Luton Borough Council upon Mr Caruso in respect of 14 Kenneth Road, Luton;
- Any information laid by Luton Borough Council against Mr Caruso in respect of an offence contrary to the Housing Act 2004 in respect of 14 Kenneth Road, Luton;
- Any memorandum of the conviction of Mr Caruso in respect of any such offence; and
- Any written statements or other documentary evidence relied upon by the Council in support of its prosecution of Mr Caruso in respect of any such offences.
- The improvement notice which expired on 4th September 2018 in respect of which the prosecution is made; and
- Any HMO Licence in force in respect of the property at any point since February 2018.

3. Events since the hearing

3.1. On 30th October 2019 the Applicant confirmed that he had no further evidence of his payment of rent since 19th February 2019.

3.2. On 5th November 2019 the Respondent pleaded guilty to the following charges relating to the subject property:

3.2.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

3.2.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges were withdrawn.

3.3. The Respondent was represented at that hearing at which the Council submitted that the offences were serious with the potential for serious

harm to result and a high degree of culpability on the part of the Respondent. The matter was adjourned for sentencing on 13th December 2019.

3.4. At the hearing on 13th December 2019 the Respondent was sentenced to:

3.4.1. To pay a fine of £27,000.00

3.4.2. To pay a victims' surcharge of £170.00

3.4.3. To pay the Council's costs of 848.70.

4. The applicable law

4.1. The relevant legislation is set out in ss. 40-44 of the Housing & Planning Act 2016 which is set out in Appendix 2 below.

4.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a tenant if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004 and that the offence relates to housing let to the tenant within 12 months of the date on which the application was made.

4.3. The maximum amount of that order is fixed by s. 44 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the rent paid during a period not exceeding 12 months whilst the Landlord was committing the offence.

4.4. In considering the amount of the order we are bound to consider:

4.4.1. the conduct of the landlord and the tenant,

4.4.2. the financial circumstances of the landlord, and

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

4.5. We are also bound to deduct from any sums awarded any relevant award of Universal Credit in respect of the rent from the amount to be repaid.

5. Our decision

- 5.1. We are satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.
- 5.2. We are further satisfied, on the basis of the information provided to us by Mr Mealey on behalf of the Council, that the property has never been licensed for use as an HMO.
- 5.3. We are further still satisfied that the Applicant paid rent to the Respondent in respect of the property whilst it was in use as an unlicensed HMO throughout the period from February 2018 to February 2019 in respect of which he seeks a rent repayment order.
- 5.4. The Applicant has presented evidence that he paid rent at the rate of £100.00 per week from 25th October 2017 until 19th February 2019. He has declined to present any evidence that he has paid rent since. There is no evidence that any part of that rent derived from a relevant award of Universal Credit.
- 5.5. So far as the conduct of the Applicant is concerned, he has been reluctant to engage with these proceedings beyond making this application which we are considering. He declined to attend the hearing and refused to provide evidence that he has paid rent to the Respondent since February 2019.
- 5.6. The Respondent has either failed or refused to engage with these proceedings. He did eventually engage with the criminal prosecution but it is apparent from the report prepared by the Council in respect of its inspection of the premises on 6th March 2019 and the witness statement of Brian McCrossan made for the purposes of the criminal prosecution that the Council's operatives' efforts to meet with Mr Caruso for the purpose of encouraging him to comply with the improvement notices served by the Council met with no success. Mr Caruso appears to have been both oblivious to the requirements of the regulations and to the state of the property more generally and careless as to the consequences. That is plainly a matter for grave concern given that Mr Caruso owns and operates at least two other properties as unlicensed HMO's (12 Kenneth Road and 35 Axe Close).
- 5.7. We know nothing about the Respondent's means because he has told us nothing, we are therefore bound to assume that they have no material bearing on the order which we make.

- 5.8. Despite the seriousness of the Respondent's breaches of the law concerning the management of the subject property, we consider that we are also bound to have regard to the Applicant's failure to engage with this application, particularly his failure to file evidence that he has paid rent since 19th February 2019. Therefore, given that the Respondent has also been the subject of a criminal prosecution as a result of which he faces criminal sanctions we order that he should repay 9 months' rent to the Applicant, namely £3,900.00 on or before 5 pm on **10 February 2020**.
- 5.9. We should add of course that nothing in this decision affects the Applicant's obligation to pay rent in respect of any period which is not the subject of this decision or his ability to apply for Rent Repayment Order in respect of those periods.

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
- (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<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
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).

Application for rent repayment order

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if—
 - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
 - (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Making of rent repayment order

43 Making of rent repayment order

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

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

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

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

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 committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

- (a) the rent 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.

Enforcement of rent repayment order

47 Enforcement of rent repayment orders

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.



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

Case references : CAM/00KA/HMK/2019/0002

Property : 14 Kenneth Road, Luton, Beds LU2 0LE

Applicant : Tomas Prochazka

Applicant's Representative : Did not attend and was not represented

Respondent : Marco Caruso

Respondent's Representative : Did not attend and was not represented

Type of application : For a Rent Repayment Order pursuant to ss. 40-44 Housing & Planning Act 2016

Tribunal members : Mr Max Thorowgood and Ms Marina Krisko

Venue : Luton Magistrates Court

Date of Decision : 13 January 2020

DECISION

1. The application

- 1.1. By his application, received on 13th June 2019, the Applicant seeks a Rent Repayment Order in respect of the sums of £100.00 per week paid by him to his landlord, the Respondent, between 19th February 2018 and 19th February 2019.

2. The hearing on 10th October 2019

- 2.1. The matter came before the Tribunal on 10th October 2019. Neither party attended. The Applicant said expressly that he did not intend to attend and the Respondent made no contact.
- 2.2. Prior to the hearing the Tribunal ordered Luton Borough Council to disclose various documents pertaining to the status of the property as an HMO and the nature of the criminal charges pending against the Respondent. Some documents were received from the Private Housing Enforcement section of Luton Borough Council on 7th October 2019 which indicated that a number of criminal charges were pending against the Respondent. The Council also asked that we adjourn the proceedings before us pending their determination.
- 2.3. Having investigated the informations laid against the Respondent at Luton Magistrates Court in the course of our deliberations and having also been unable to ascertain whether the property was on the list of registered HMO's or not (amongst other things), we decided to adjourn the hearing pending determination of the criminal charges and made the following order:

1. The determination of the application be adjourned to abide the determination of the criminal prosecution brought against the Respondent in respect of this property at the hearing fixed for 22nd October 2019.

2. Unless either party gives notice in writing to the Tribunal and the other party requiring a further hearing of this matter by 4 pm on [21 days] the Tribunal shall make its final determination in respect of this matter on the papers without further hearing.

3. The Applicant shall provide evidence of his payment of rent since 19th February 2019 (that being the last date for which he has so far provided evidence) by 4 pm 25 October 2019.

We also wrote to Luton Borough Council asking that it provide the following further information and documents:

- Any Improvement Notice(s) served by the Luton Borough Council upon Mr Caruso in respect of 14 Kenneth Road, Luton;
- Any information laid by Luton Borough Council against Mr Caruso in respect of an offence contrary to the Housing Act 2004 in respect of 14 Kenneth Road, Luton;
- Any memorandum of the conviction of Mr Caruso in respect of any such offence; and
- Any written statements or other documentary evidence relied upon by the Council in support of its prosecution of Mr Caruso in respect of any such offences.
- The improvement notice which expired on 4th September 2018 in respect of which the prosecution is made; and
- Any HMO Licence in force in respect of the property at any point since February 2018.

3. Events since the hearing

3.1. On 30th October 2019 the Applicant confirmed that he had no further evidence of his payment of rent since 19th February 2019.

3.2. On 5th November 2019 the Respondent pleaded guilty to the following charges relating to the subject property:

3.2.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

3.2.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges were withdrawn.

3.3. The Respondent was represented at that hearing at which the Council submitted that the offences were serious with the potential for serious

harm to result and a high degree of culpability on the part of the Respondent. The matter was adjourned for sentencing on 13th December 2019.

3.4. At the hearing on 13th December 2019 the Respondent was sentenced to:

3.4.1. To pay a fine of £27,000.00

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3.4.3. To pay the Council's costs of 848.70.

4. The applicable law

4.1. The relevant legislation is set out in ss. 40-44 of the Housing & Planning Act 2016 which is set out in Appendix 2 below.

4.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a tenant if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004 and that the offence relates to housing let to the tenant within 12 months of the date on which the application was made.

4.3. The maximum amount of that order is fixed by s. 44 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the rent paid during a period not exceeding 12 months whilst the Landlord was committing the offence.

4.4. In considering the amount of the order we are bound to consider:

4.4.1. the conduct of the landlord and the tenant,

4.4.2. the financial circumstances of the landlord, and

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

4.5. We are also bound to deduct from any sums awarded any relevant award of Universal Credit in respect of the rent from the amount to be repaid.

5. Our decision

- 5.1. We are satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.
- 5.2. We are further satisfied, on the basis of the information provided to us by Mr Mealey on behalf of the Council, that the property has never been licensed for use as an HMO.
- 5.3. We are further still satisfied that the Applicant paid rent to the Respondent in respect of the property whilst it was in use as an unlicensed HMO throughout the period from February 2018 to February 2019 in respect of which he seeks a rent repayment order.
- 5.4. The Applicant has presented evidence that he paid rent at the rate of £100.00 per week from 25th October 2017 until 19th February 2019. He has declined to present any evidence that he has paid rent since. There is no evidence that any part of that rent derived from a relevant award of Universal Credit.
- 5.5. So far as the conduct of the Applicant is concerned, he has been reluctant to engage with these proceedings beyond making this application which we are considering. He declined to attend the hearing and refused to provide evidence that he has paid rent to the Respondent since February 2019.
- 5.6. The Respondent has either failed or refused to engage with these proceedings. He did eventually engage with the criminal prosecution but it is apparent from the report prepared by the Council in respect of its inspection of the premises on 6th March 2019 and the witness statement of Brian McCrossan made for the purposes of the criminal prosecution that the Council's operatives' efforts to meet with Mr Caruso for the purpose of encouraging him to comply with the improvement notices served by the Council met with no success. Mr Caruso appears to have been both oblivious to the requirements of the regulations and to the state of the property more generally and careless as to the consequences. That is plainly a matter for grave concern given that Mr Caruso owns and operates at least two other properties as unlicensed HMO's (12 Kenneth Road and 35 Axe Close).
- 5.7. We know nothing about the Respondent's means because he has told us nothing, we are therefore bound to assume that they have no material bearing on the order which we make.

- 5.8. Despite the seriousness of the Respondent's breaches of the law concerning the management of the subject property, we consider that we are also bound to have regard to the Applicant's failure to engage with this application, particularly his failure to file evidence that he has paid rent since 19th February 2019. Therefore, given that the Respondent has also been the subject of a criminal prosecution as a result of which he faces criminal sanctions we order that he should repay 9 months' rent to the Applicant, namely £3,900.00 on or before 5 pm on **10 February 2020**.
- 5.9. We should add of course that nothing in this decision affects the Applicant's obligation to pay rent in respect of any period which is not the subject of this decision or his ability to apply for Rent Repayment Order in respect of those periods.

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
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- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

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3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition

order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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- (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.

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- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
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- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

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Making of rent repayment order

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

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

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

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

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

47 Enforcement of rent repayment orders

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.



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

Case references : CAM/00KA/HMK/2019/0002

Property : 14 Kenneth Road, Luton, Beds LU2 0LE

Applicant : Tomas Prochazka

Applicant's Representative : Did not attend and was not represented

Respondent : Marco Caruso

Respondent's Representative : Did not attend and was not represented

Type of application : For a Rent Repayment Order pursuant to ss. 40-44 Housing & Planning Act 2016

Tribunal members : Mr Max Thorowgood and Ms Marina Krisko

Venue : Luton Magistrates Court

Date of Decision : 13 January 2020

DECISION

1. The application

- 1.1. By his application, received on 13th June 2019, the Applicant seeks a Rent Repayment Order in respect of the sums of £100.00 per week paid by him to his landlord, the Respondent, between 19th February 2018 and 19th February 2019.

2. The hearing on 10th October 2019

- 2.1. The matter came before the Tribunal on 10th October 2019. Neither party attended. The Applicant said expressly that he did not intend to attend and the Respondent made no contact.
- 2.2. Prior to the hearing the Tribunal ordered Luton Borough Council to disclose various documents pertaining to the status of the property as an HMO and the nature of the criminal charges pending against the Respondent. Some documents were received from the Private Housing Enforcement section of Luton Borough Council on 7th October 2019 which indicated that a number of criminal charges were pending against the Respondent. The Council also asked that we adjourn the proceedings before us pending their determination.
- 2.3. Having investigated the informations laid against the Respondent at Luton Magistrates Court in the course of our deliberations and having also been unable to ascertain whether the property was on the list of registered HMO's or not (amongst other things), we decided to adjourn the hearing pending determination of the criminal charges and made the following order:

1. The determination of the application be adjourned to abide the determination of the criminal prosecution brought against the Respondent in respect of this property at the hearing fixed for 22nd October 2019.

2. Unless either party gives notice in writing to the Tribunal and the other party requiring a further hearing of this matter by 4 pm on [21 days] the Tribunal shall make its final determination in respect of this matter on the papers without further hearing.

3. The Applicant shall provide evidence of his payment of rent since 19th February 2019 (that being the last date for which he has so far provided evidence) by 4 pm 25 October 2019.

We also wrote to Luton Borough Council asking that it provide the following further information and documents:

- Any Improvement Notice(s) served by the Luton Borough Council upon Mr Caruso in respect of 14 Kenneth Road, Luton;
- Any information laid by Luton Borough Council against Mr Caruso in respect of an offence contrary to the Housing Act 2004 in respect of 14 Kenneth Road, Luton;
- Any memorandum of the conviction of Mr Caruso in respect of any such offence; and
- Any written statements or other documentary evidence relied upon by the Council in support of its prosecution of Mr Caruso in respect of any such offences.
- The improvement notice which expired on 4th September 2018 in respect of which the prosecution is made; and
- Any HMO Licence in force in respect of the property at any point since February 2018.

3. Events since the hearing

3.1. On 30th October 2019 the Applicant confirmed that he had no further evidence of his payment of rent since 19th February 2019.

3.2. On 5th November 2019 the Respondent pleaded guilty to the following charges relating to the subject property:

3.2.1. Controlling an unlicensed HMO contrary to s. 72(1) & (6) Housing Act 2004; and

3.2.2. 7 counts relating to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 contrary to section 234 Housing Act 2004.

The remaining four charges were withdrawn.

3.3. The Respondent was represented at that hearing at which the Council submitted that the offences were serious with the potential for serious

harm to result and a high degree of culpability on the part of the Respondent. The matter was adjourned for sentencing on 13th December 2019.

3.4. At the hearing on 13th December 2019 the Respondent was sentenced to:

3.4.1. To pay a fine of £27,000.00

3.4.2. To pay a victims' surcharge of £170.00

3.4.3. To pay the Council's costs of 848.70.

4. The applicable law

4.1. The relevant legislation is set out in ss. 40-44 of the Housing & Planning Act 2016 which is set out in Appendix 2 below.

4.2. In summary the position is as follows. The Tribunal may make a Rent Repayment order on the application of a tenant if it is satisfied beyond reasonable doubt that the Landlord has committed an offence under s. 72(1) Housing Act 2004 and that the offence relates to housing let to the tenant within 12 months of the date on which the application was made.

4.3. The maximum amount of that order is fixed by s. 44 which provides, in relation to the offence with which we are concerned under s. 72 Housing Act 2004, that the maximum possible award is the rent paid during a period not exceeding 12 months whilst the Landlord was committing the offence.

4.4. In considering the amount of the order we are bound to consider:

4.4.1. the conduct of the landlord and the tenant,

4.4.2. the financial circumstances of the landlord, and

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

4.5. We are also bound to deduct from any sums awarded any relevant award of Universal Credit in respect of the rent from the amount to be repaid.

5. Our decision

- 5.1. We are satisfied beyond reasonable doubt that on 6th March 2019 (which is within 12 months of the date on which this Applicant's application was made) the Respondent was guilty of an offence under s. 72(1) Housing Act 2004 because he pleaded guilty to that offence on 5th November 2019.
- 5.2. We are further satisfied, on the basis of the information provided to us by Mr Mealey on behalf of the Council, that the property has never been licensed for use as an HMO.
- 5.3. We are further still satisfied that the Applicant paid rent to the Respondent in respect of the property whilst it was in use as an unlicensed HMO throughout the period from February 2018 to February 2019 in respect of which he seeks a rent repayment order.
- 5.4. The Applicant has presented evidence that he paid rent at the rate of £100.00 per week from 25th October 2017 until 19th February 2019. He has declined to present any evidence that he has paid rent since. There is no evidence that any part of that rent derived from a relevant award of Universal Credit.
- 5.5. So far as the conduct of the Applicant is concerned, he has been reluctant to engage with these proceedings beyond making this application which we are considering. He declined to attend the hearing and refused to provide evidence that he has paid rent to the Respondent since February 2019.
- 5.6. The Respondent has either failed or refused to engage with these proceedings. He did eventually engage with the criminal prosecution but it is apparent from the report prepared by the Council in respect of its inspection of the premises on 6th March 2019 and the witness statement of Brian McCrossan made for the purposes of the criminal prosecution that the Council's operatives' efforts to meet with Mr Caruso for the purpose of encouraging him to comply with the improvement notices served by the Council met with no success. Mr Caruso appears to have been both oblivious to the requirements of the regulations and to the state of the property more generally and careless as to the consequences. That is plainly a matter for grave concern given that Mr Caruso owns and operates at least two other properties as unlicensed HMO's (12 Kenneth Road and 35 Axe Close).
- 5.7. We know nothing about the Respondent's means because he has told us nothing, we are therefore bound to assume that they have no material bearing on the order which we make.

- 5.8. Despite the seriousness of the Respondent's breaches of the law concerning the management of the subject property, we consider that we are also bound to have regard to the Applicant's failure to engage with this application, particularly his failure to file evidence that he has paid rent since 19th February 2019. Therefore, given that the Respondent has also been the subject of a criminal prosecution as a result of which he faces criminal sanctions we order that he should repay 9 months' rent to the Applicant, namely £3,900.00 on or before 5 pm on **10 February 2020**.
- 5.9. We should add of course that nothing in this decision affects the Applicant's obligation to pay rent in respect of any period which is not the subject of this decision or his ability to apply for Rent Repayment Order in respect of those periods.

APPENDIX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 2

RELEVANT LEGISLATION

Chapter 4 Rent Repayment Orders

Rent repayment orders: introduction

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
- (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<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
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).

Application for rent repayment order

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if—
 - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
 - (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

Making of rent repayment order

43 Making of rent repayment order

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

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

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

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

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 committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

- (a) the rent 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.

Enforcement of rent repayment order

47 Enforcement of rent repayment orders

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.