FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMF/2020/0219**
Property	**:**	**93 Laburnum Street, Kent Wharf, London E2 8BD**
Applicant	**:**	**Aleksandra Mizera**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Dean Anthony Murphy**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Judge Nicol** **Ms F Macleod**
Date and Venue of Hearing	**:**	**23rd April 2021;** **By video conference**
Date of Decision	**:**	**24th May 2021**

DECISION

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1) **The Respondent shall pay to the Applicant a Rent Repayment Order in the sum of £5,714.**

2) **The Respondent shall further reimburse the Applicant their Tribunal fees totalling £300.**

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

Reasons

1. The Applicant occupied a room at the subject property at 93 Laburnum Street, Kent Wharf, London E2 8BD, a flat with 4 bedrooms, a bathroom and a kitchen, from 21st September 2019 to 18th March 2020.

2. The application was made on 20th October 2020 and originally included Ms Marta Cieslak but she vacated her room on 19th October 2019, one day outside the 12-month time limit. The Applicants' representative, Tenants for Justice, applied for Ms Cieslak to be withdrawn from the application and the Tribunal consented.

3. The application provided details of the other occupants:

   - Room 1: Golovatii Luliana and Alina Rudzeins from 13th April 2019 to 30th March 2020;
   - Room 2: Ms Cieslack from 19th April to 19th October 2019 and, thereafter, Ms Tatiane Vincentini until 30th April 2020;
   - Room 3: Mr Cristian-Nicolae Regep from 13th June 2018 to 30th April 2020; and
   - Room 4: Ms Ana Rita Dinis de Almeida from 6th March to 2nd September 2019 and, thereafter, the Applicant until 18th March 2020.

4. Apparently, they were all potential applicants and were recorded as such on Justice for Tenants's database. This resulted in all their names being listed on the front page of the Applicant's bundle but the Tribunal accepts this was a mistake and they are not actually applicants other than Ms Mizera.

5. The Respondent is the leaseholder of the property. On 28th June 2017 he sub-let the property, through his agents, Jeffrey Smith & Co, for a fixed term of 3 years, to PMC Management & Collections Ltd. It appears that PMC permitted other companies, namely London Homes Property Management Ltd in the case of the Applicant and Simple Properties for the others, to bring the aforementioned occupants into the property.

6. The Applicant seeks a rent repayment order against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

7. The matter was heard on 23rd April 2021 by remote video conference. The attendees were:

   - The Applicant;
   - Mr Alasdair McClenahan from Justice for Tenants, representing the Applicant;
   - The Respondent; and
   - Mr Toby Smith of Jeffrey Smith & Co, the Respondent's agents.

8. The Applicant, the Respondent and Mr Smith had given statements on which they were cross-examined.

9. The documents available to the Tribunal consisted of the following in electronic form:

- A bundle compiled by Justice for Tenants;
- A bundle, in 9 separate parts plus an index, compiled on behalf of the Respondent; and
- A smaller reply bundle, also compiled by Justice for Tenants.

The offence

10. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant has alleged that the Respondent was guilty of having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

11. The local authority is the London Borough of Hackney. The property comes within Hackney's Additional Licensing Scheme which was adopted with effect from 1st October 2018. By email dated 8th October 2020, Hackney confirmed that there was no licence or an application for a licence in respect of the property.

12. The Respondent asserts that the circumstances are such that either he did not commit the offence or, alternatively, he has a defence of reasonable excuse under section 72(5).

13. The Respondent claims that PMC, Simple and any other company involved ran a complex scam defrauding him of money and attempting to extort him to enter into a further agreement. That is not how it looks to the Tribunal.

14. The Respondent's agreement with PMC did not prohibit sub-letting, whether in the form of an HMO or otherwise. The Respondent understood that PMC, although being in the business of residential letting, would only use the property for their own employees but he put nothing in place to enable him to check what was actually happening. He was paid his rent, regularly and on time, for the 3-year term other than the last quarter. When PMC dropped out of the picture and defaulted on the rent, Simple offered to take over. The Respondent made it clear that he was not concerned about anything other than rent being paid on time so there was no reason for PMC or Simple to think he had any problem with what they were doing. There is no suggestion that they had to make any effort to hide anything from the Respondent because he made no effort to find anything out.

15. In reality, it appears that PMC and Simple were looking to let properties out for maximum income with minimum service, either to their tenants or their landlord. One of the rooms at the property was divided to allow for an additional room to be let. The Applicant and her fellow occupants had numerous complaints including with faulty

windows, a broken lock, bedbugs, a faulty fridge, mice, the smoke alarm needing new batteries and the lack of attendance by the cleaner. The agency they had to deal with, Simple, was unresponsive or attended without notice. A professional letting agency would have known about the licensing requirements but there was no apparent interest in compliance.

16. As soon as the Respondent and his agents at Jeffrey Smith & Co realised that PMC had apparently gone, to be replaced without their consent by Simple, and that they were letting a potentially unlawful HMO, they tried to take a hold of the situation. They granted tenancy agreements to the occupants until they could leave and made preliminary enquiries with the local authority about licensing. However, by that time, the Applicant and her fellow occupants had been living for many months in accommodation which should have been licensed but was not.

17. The Respondent points out that the occupancy agreements for the Applicant and her fellow occupants are in dubious form. There isn't a consistent format but they all purport to be something akin to a hotel booking, creating no more than a licence. Cleaning was supposed to be provided (the Applicant's evidence is that the cleaner only attended once) and perhaps this was meant to enable an argument that the property was serviced so as to support a claim that the occupancy agreements were mere licences.

18. For the purposes of considering a rent repayment order, it does not matter whether the occupancy agreement was a licence or a tenancy. Under section 56 of the 2016 Act, "tenancy" includes a licence. Under section 52 of the 2016 Act, rent includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit – this includes licence payments.

19. Perhaps more fundamentally, the Respondent questions whether the occupancy agreements presented on behalf of the Applicant were made up for the purpose of these proceedings. Such a serious allegation of fraud by a party to legal proceedings requires evidence. The evidence provided by the Respondent supports his claim that the organisations involved in granting the occupancy agreements were acting unprofessionally but there is no suggestion that the Applicant or her fellow occupants were anything other than victims as well.

20. Justice for Tenants has never demonstrated anything other than proper professional conduct before the Tribunal, despite not being lawyers themselves. In any event, they clearly know the law. If they were going to make up occupancy agreements, it could be expected that they would come up with something substantially more convincing.

21. The Tribunal is satisfied that the documents presented by the Applicant are genuinely what they purport to be. Of course this does not reflect

well on the organisations that granted them but that is not the Applicant's fault or responsibility.

22. The Respondent asserted that it was bizarre that the Applicant would have agreed to take up occupation without viewing the property first and then to extend it with such an obviously defective form of agreement or without exercising due diligence in respect of her landlord. This both over-estimates the knowledge of landlord and tenant law and practice amongst tenants and under-estimates the difficulties faced by putative tenants in the London housing market. The Applicant asserted in evidence that she did not question the arrangements, given that she was a full-time student in a hurry to find accommodation and that it was her first time renting in London, and the Tribunal finds her evidence credible.

23. The Respondent asserts strongly that the occupancy arrangements have nothing to do with him. The Tribunal has no doubt that he was entirely ignorant of what was going on up until his agents, Jeffrey Smith & Co, started making enquiries as to why they were no longer receiving rent.

24. The Respondent claims to have been unaware of the fact that their tenants, PMC Management & Collections Ltd, had allowed the creation of an HMO or that they had failed to comply with any licensing requirements. Ignorance of the law, of course, cannot be an excuse but ignorance of the underlying facts may be: *IR Management v Salford* [2020] UKUT 81 (LC); [2020] HLR 24 at paras 29-30, *Sutton v Norwich CC* [2020] UKUT 90 (LC) at para 221 and *R (Mohamed & Lahrie) v LBWF* [2020] EWHC 1083 (Admin); [2020] HLR 34.

25. However, ignorance alone is not an excuse, let alone a reasonable one. The legislation on licensing and rent repayment orders is structured so as to make all those with a superior interest jointly responsible for what happens in their property. The Upper Tribunal confirmed in *Rakusen v Jepsen* [2020] UKUT 298 that superior landlords, not just a tenant's immediate landlord, may be liable to pay a rent repayment order. This is unsurprising as the private rented sector has numerous examples of arrangements whereby an investor landlord lets to an organisation so that that organisation may sub-let, an arrangement known as rent-to-rent. If the landlord were able to insulate themselves from all responsibility for any sub-letting, the licensing regime and, in particular, the provisions for rent repayment orders would be neutered.

26. Further, the retention of such responsibility is not onerous. Jeffrey Smith & Co used one of their own standard assured shorthold tenancy precedents to create the letting to PMC – they should have known that a company cannot have an assured tenancy under section 1 of the Housing Act 1988 and so the precedent was completely inappropriate. Instead, they could have used a proper agreement which expressly apportioned responsibility for matters such as licensing and contained monitoring provisions such as requiring copies of any occupancy agreements and regular inspections. The Tribunal notes that Jeffrey

Smith & Co took 8% commission from the rent so it is not as though they were not being paid so as to provide such a basic service.

27. The fact is that, on signing the agreement, the Respondent and his agents regarded themselves as able to wash their hands of all responsibility for management of the property. It was only as rent payments faltered that they took any interest in what was happening. They could have done better and the legislation requires them to do better.

28. Therefore, the Tribunal is satisfied that the Respondent has no defence to the charge that he committed the offence of failing to licence his HMO.

Rent Repayment Order

29. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation.

30. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 9. In *Parker v Waller* … the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.
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> 10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be "such amount as the tribunal considers reasonable in the circumstances". … With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):
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> > "There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable."
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> 11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. … Paragraph 26(iii) of *Parker v Waller* is not relevant to the provisions of the 2016 Act; nor is the decision in *Fallon v Wilson* [2014] UKUT 0300 (LC) insofar as it followed that paragraph.
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> 12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of

up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.

13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

> I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. In cases where the landlord pays for utilities, as he did in *Parker v Waller,* there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

17. Section 249A of the 2016 Act enables the local housing authority to impose a financial penalty for a number of offences including

the HMO licence offence, as an alternative to prosecution. A landlord may therefore suffer either a criminal or a civil penalty in addition to a rent repayment order. …

18. The President deducted the fine from the rent in determining the amount of the rent repayment order; under the current statute, in the absence of the provision about reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.

19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. …

31. On the basis of the decision in *Vadamalayan*, when the Tribunal has the power to make an RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the 2016 Act, from which the only deductions should be those permitted under section 44(3) and (4). In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the "starting point". However, he said that this issue is a matter for a later appeal. In the meantime, the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered in this decision, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.

32. The Respondent made no submissions in relation to his financial circumstances. He was hampered in making any submissions in relation to the Applicant's conduct since he was unaware of her or her fellow occupants until late into their time at his property but the fact is that there is no reason to think that they were other than good tenants.

The Respondent received his rent, as referred to above, and no issues were raised with him about the tenants, both of which imply that the tenants paid their rent and caused no significant problems.

33. As to the Respondent's own conduct, neither he nor his agents were directly responsible for any of the matters which gave rise to complaints but they permitted this situation to arise due to their hands-off approach. There is nothing in either party's conduct which could lower the amount the Tribunal would otherwise be minded to consider for an RRO.

34. The Applicant seeks an RRO in the sum of £5,714 for the rent she paid between 21st September 2019 and 18th March 2020, as set out in a table within her bundle of documents. The Tribunal accepts her evidence that this is what she paid and makes a RRO for the full amount.

35. The Applicant also sought reimbursement of her Tribunal fees, £100 for the application and £200 for the hearing, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the fact that the application has been successful, and in the light of all the circumstances of this case, the Tribunal has concluded that it is appropriate to order reimbursement.

Name: Judge Nicol **Date:** 24th May 2021

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

(1) 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.

(2) 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.

(3) 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).

263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(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; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) 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;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

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

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

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

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

Section 43 Making of rent repayment order

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

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

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

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

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

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

Section 44 Amount of order: tenants

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

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

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

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

(b) the financial circumstances of the landlord, and

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

Section 52 Interpretation of Chapter

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"relevant award of universal credit" means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.