



Rent Repayment Orders

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What is a Rent Repayment Order?


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- Application to First-tier Tribunal by a tenant or local authority for landlord to repay rent received
- RROs introduced by Housing Act 2004, and originally only applied to failing to hold the correct HMO/selective licence
- New types of RRO introduced by the Housing and Planning Act 2016

Which rules apply?

- HPA provisions came into force on **6 April 2017**.
- New rules applies to offences committed on or after 6 April 2017
- Housing Act 2004 continues to apply where offence was wholly committed before 6 April 2017 or offences which began before 6 April 2017 and ended no later than 5 April 2018
- Transitional period is coming to an end now.

- Extended RROs to cover wider range of offences
- Changed procedure for applying for RROs- most importantly tenants no longer need landlord to be convicted of offence before making application
- Gave new powers to local authorities



*RROs under the
Housing and
Planning Act 2016*

When can a RRO be made?

- Landlord must commit a specified offence
 - Control or management of an unlicensed house
 - Violent Entry of premises
 - Unlawful eviction and harassment
 - Failure to comply with Improvement Notice
 - Failure to comply with Prohibition Order
 - Breach of banning order

When can a RRO be made?

Either:

- Conviction for relevant offence, and then application for RRO

or

- Application without a conviction

- Landlord must have committed a specified offence relating to housing in local authority's area
- LA must give notice of intended proceedings
 - Within 12 months of landlord committing offence
- Notice must state:
 - Proposal to apply for RRO
 - Reasons why
 - Amount LA seeks to recover
 - Time to make reps (not less than 28 days)
- Application to tribunal after expiry of notice period
- Must have regard to statutory guidance

- Landlord must have committed a specified offence
- Offence relates to housing that, at the time of the offence, was let to the tenant (includes grant of a licence to occupy)
- Offence was committed in 12 months prior to date of application
- No need for conviction or local authority RRO first
- No notice requirement
- Tenant can apply straight to the tribunal

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Control or management of an unlicensed house

95 Offences in relation to licensing of houses under this Part

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

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.

Control or management of an unlicensed house



Licence Overview

No selective licensing in Camden but mandatory HMO and additional licensing schemes apply borough wide.

Control or management of an unlicensed house

- Defence of reasonable excuse – no offence committed if defence made out.
- Not all excuses are *reasonable* excuses.
- Application for a licence or temporary exemption notice will stop the offence continuing
- Unlimited fine in the criminal courts of civil penalty of up to £30,000 in addition to any rent repayment order

Section 1(2)-(3A) Protection from Eviction Act 1977:

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

[(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

the premises.

Key points – offence committed if:

- Landlord unlawfully deprives the tenant of their property (or attempts to) unless they reasonably believed that the tenant had ceased to reside at the property.
- Landlord does acts likely to interfere with the peace or comfort of the tenant or any member of their household / persistently withholds services with the intention to getting a tenant to leave or not exercise their rights (or knows these acts are likely to have that result).

- Interfere with the peace or comfort of the tenant
 - E.g. excessive noise, threats of violence, knocking holes in walls, leaving rubble in property
 - Single act can be sufficient
- Persistently withdrawing or withholding services
 - Gas, water and electricity are definitely services
 - Telephone and internet?
 - Failing to pay a bill without an intention to harass the tenant unlikely to constitute the offence

Failure to comply with improvement notice

30 Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

Failure to comply with improvement notice

When operative?

- The general rule – after 21 days
- If notice suspended, when the suspension ends
- If appealed, when appeal finally concluded

Defence

s30(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

Failure to comply with improvement notice

- Unlimited fine in the criminal courts
- Financial penalty of up to £30,000
- Proceeds of Crime confiscation?
- And rent repayment order

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- Tribunal may make a RRO if satisfied beyond reasonable doubt that landlord has committed an offence – whether or not landlord has been convicted
- Tribunal retains residual discretion whether or not to actually make an order
- *“it will be a very rare case where a tribunal does exercise its discretion not to make an order”* LB Newham v Harris [2017] UKUT 0264 (LC)
- Criminal standard of proof

Proving the offence

- If conviction already, very easy
- If the Tribunal has dealt with an appeal against a Financial Penalty, very easy
- If tenants make an application, the local authority may assist them



How much?

Amount of RRO

The amount of the RRO will depend on:

1. Who is making the application?
 - Tenant
 - Local authority

2. What is the offence?

3. Level of Tribunal's discretion:
 - **Wide discretion** – Tribunal will consider range of factors

 - **Limited discretion** – Tribunal must award maximum amount unless unreasonable due to exceptional circumstances

When Tribunal has limited discretion

- Where landlord has been convicted of the offence or received a financial penalty (with no prospect of appeal)

AND

- RRO is made in favour of local authority for all offences
- OR
- RRO is made in favour of tenant for all offences EXCEPT failure to license

Tribunal must order maximum unless exceptional circumstances

Tenant applications for failing to license offences

- Tribunal retains **wide discretion** for all tenant applications relating to failure to license offences
- Even where landlord has been convicted or received financial penalty in respect of offence
- Tribunal not compelled to order maximum amount

- Not more than the rent paid to landlord by tenant
- 12 month cap
- Any HB/UC must be deducted (but council can claim separately)
- Tribunal must consider:
 - Conduct of landlord and tenant
 - Financial circumstances of landlord
 - Whether landlord has ever been convicted of any 'RRO offence'

- In Housing Act 2004 cases *Parker v Waller* and *Fallon v Wilson* Tribunal focused on profit made by landlord
- Tribunal set RRO as percentage of net profit
- In assessing net profit Tribunal allowed landlord to argue that outgoings such as mortgage repayments, insurance and utilities included in the rent should be deducted
- Purpose of RRO to target landlord's profit? Remove financial benefit from letting property illegally?

- Factors tribunals are taking into account:
 - Expenses such as mortgage repayments to identify landlord's profit
 - Culpability – professional landlord? Landlord let down by agent?
 - Seriousness of offence – has LA prosecuted/served financial penalty?
 - Length of time offence committed
 - Health or safety issues – has landlord's conduct resulted in risk of harm to tenants?
 - Landlord otherwise responsible? Responsive to other issues e.g. complaints of repairs?
 - Did landlord act promptly to apply for licence?
 - Did tenants have knowledge of lack of licence before taking occupation?

- Factors tribunals are not taking into account:
 - Expenses incurred pre-tenancy e.g. pre-let cleaning
 - Letting agency fees
 - Fact that tenant had benefit of occupying the property
 - Poor conduct on part of landlord that is unrelated to the offence that underlies the RRO e.g. complaints re repairs but disrepair that causes safety issues could be relevant/ also poor management

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Common Issues

Who can be subject to an RRO?

- RROs can only be made against the landlord, not the agent
- Even where agent has been convicted of an offence
- But ‘agent’ might actually be the landlord – rent-to-rent arrangements
- Company landlords

*RROs can only be made in relation
to rent paid*

- RROs may not be used to recover other charges e.g. deposit, admin fees etc
- HB/UC must also be deducted if tenant application

- With failure to license offences, in particular, the period of the offence is important
- RRO can only be made for period in which landlord is committing an offence
- Offence of operating HMO without a licence ceases to be committed on date that application for HMO licence or temporary exemption notice is duly made
- Parties should be able to agree relevant period to narrow issues in dispute

- Tenants might pursue weak claims if they been treated badly
- Might be difficult to settle with unrepresented tenants
- Tenants can bring a claim even if prosecutors decide it is not in the public interest to carry out enforcement action
- Tenants not restricted by council ‘amnesties’?
- Unlikely tenants would be ordered to pay legal costs of landlord if they bring a claim and lose

Contact Me

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