# RENT REPAYMENT ORDERS – AN ESSENTIAL ROUNDUP

**Brooke Lyne**

**Landmark Chambers**

# KEY ISSUES

- What is an RRO?
- What offences may give rise to an RRO?
- Who can apply for an RRO?
- Who can be the subject of an RRO?
- What do you need to prove?
- Defences
- Quantum
- Procedure

# WHAT IS AN RRO?

- What it says on the tin!
- “An order requiring the landlord under a tenancy to “repay an amount of rent paid by a tenant” : s.40(2), HPA 2016.
- These have existed since Housing Act 2004 came in to force
- A new, wider, regime was introduced under the Housing and Planning Act 2016 (for England)
- Part of a package of measures to “crack down” on “rogue landlords”

# WHAT OFFENCES?

| | 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 |

# WHO CAN APPLY FOR AN RRO?

- A tenant of premises where landlord has committed a relevant housing offence
- A local housing authority – where the landlord received rent by way of Housing Benefit or Universal Credit

# WHO CAN BE SUBJECT OF AN RRO?

- (Under the HPA 2016)
- Landlord under a tenancy of premises in England
- Superior landlords?
  - *Rakusen v Jepsen* [2021]EWCA Civ 1150
  - *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC) – no longer good law

# WHAT DO YOU NEED TO PROVE?

- A tenant may apply for a rent repayment order only if:
  - the offence relates to housing that, at the time of the offence, was let to the tenant; and
  - the offence was committed in the period of 12 months ending with the day on which the application is made
- A local housing authority may apply for a rent repayment order only if:
  - the offence relates to housing in the authority's area; and
  - the authority has complied with the requirements as to notice
- The tribunal must be satisfied beyond reasonable doubt that the landlord has committed a relevant offence (s.43(1), HPA 2016)
  - *Mortimer v Calcagno* [2020] UKUT 122 (LC)
  - *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC)

# WHAT DEFENCES MAY BE AVAILABLE?

- Licensing cases:
  - Was a licence actually required? Maybe it was not a HMO at all. Was the property actually within the designated area of a selective licensing scheme?
  - "reasonable excuse" (section 95(4), Housing Act 2004)
    - Ignorance of relevant facts
    - *IR Management Ltd v Salford City Council* [2020] UKUT 81 (LC), [2020] H.L.R. 24
    - *D'Costa v D'Andrea* [2021] UKUT 144
    - To be proved by landlord to the civil standard
  - Application for a licence outstanding (section 95(3)(b), Housing Act 2004)

# WHAT DEFENCES MAY BE AVAILABLE?

- Are all the elements of the offence made out in the first place?
- Is there a defence to the primary offence?
- Unlawful eviction
  - A reasonable belief that the residential occupier had ceased to reside at the premises (s.1(2), PEA 1977)

# QUANTUM OF AN RRO

- The FTT has a discretion as to whether to make an RRO at all
- Application by tenants:
  - To be determined in accordance with s.44, HPA 2016
- Application by LHA:
  - To be determined in accordance with s.45, HPA 2016
- Where L has been convicted of the offence to which the RRO relates
  - To be determined in accordance with s.46, HPA 2016

# QUANTUM OF AN RRO - TENANTS

- Section 44, HPA 2016
- <u>No Conviction, Stage 1 – calculating the maximum potential RRO</u>
- Where the offence is securing entry by violence; or unlawful eviction or harassment of occupiers, then the maximum RRO is to be calculated by reference to:
  - The period of 12 months ending with the date of the offence
- Where it is any of the other offences, which are "continuing offences", then the maximum is to be calculated by reference to:
  - A period, not exceeding 12 months, during which the landlord was committing the offence
  - *Kowalek v Hassanein* [2021] UKUT 143 (LC)
- Less any award of UC or HB

# QUANTUM OF AN RRO - TENANTS

- <u>No Conviction, Stage 2 – the discretionary phase</u>
- "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."

# QUANTUM OF AN RRO - TENANTS

- What conduct?
  - Rent arrears?
    - *Awad v Hooley* [2021] UKUT 55 (LC)
    - *Kowalek v Hassanein* [2021] UKUT 143 (LC)
- Financial circumstances?
  - *Vadamalayan v Stewart* [2020] UKUT 183 (LC)
  - Not about landlord's profit
  - Not to apply old approach from *Parker v Waller* [2012] UKUT 301 (LC)

# QUANTUM OF AN RRO - CONVICTION

- Section 46, HPA 2016
- Maximum RRO will be made if two conditions are met:
  - Either the landlord has been convicted of the offence; or s/he has received a financial penalty in respect of the offence (and there is no prospect of appeal against that penalty).
  - The RRO is to be made in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or in favour of a local housing authority.
- But, the FTT can make a different order where by reason of the "exceptional circumstances" the order would be "unreasonable"
  - *Ball v Sefton MBC* [2021] UKUT 42 (LC)

# PROCEDURE

- Application to First Tier Tribunal (Property Chamber)
- Application form downloadable online – RRO1
- Must do it within 12 months of the offence being committed

# PROCEDURE

- Once the application is filed, the FTT will usually send out directions without a hearing
- Statements of case and witness statements to be filed
- Paper / hearing
  - Usually ought to be a hearing if there are disputes of fact
  - Given the standard of proof
  - *Raza v Bradford MDC* [2021] UKUT 39 (LC) ; *Wilson v Campbell* [2019] UKUT 363 (LC)
- Hearing
  - Witnesses should attend
  - FTT should consider “reasonable excuse” defence, even if it isn’t raised

# PROCEDURE

- Costs
  - FTT has limited costs jurisdiction
  - Usually no order made for legal costs, except tribunal fees
  - Rule 13 – costs may be ordered where one party has behaved unreasonably
  - High threshold
- Appeals
  - To Upper Tribunal (Lands Chamber)

Landmark CHAMBERS

# Brooke Lyne
# Landmark Chambers