

Rent Repayment Orders A Tenants' Guide

Introduction

A rent repayment order (RRO) is a means for tenants to reclaim up to twelve months rent where a landlord rents out accommodation which should be licensed, but is not. However the landlord must first be found guilty in court or in a tribunal of committing the offence of renting the accommodation without a licence, such cases will be taken by your local council.

In the first successful RRO case, which was decided in October 2007, sixteen students reclaimed £18,540, 50% of the rent they had paid in the nine month period before they moved out.

In most cases an application for an RRO needs to be made **as soon as possible**, this is because the amount you can claim will decrease as time goes on. Tenants, or former tenants can usually get help with their application from a Citizens Advice Bureau, their local council, a students union, or another local organisation.

Your landlord has no right to make you leave your home because you are applying for a RRO. The laws protecting your tenancy will still apply and there are extra legal restrictions on evictions by landlords who are running unlicensed accommodation.

This guide explains the process for applying for a RRO and describes the evidence you will need. It also explains where you can get help and the roles of the various people involved.

How do I know if the house I rent or recently rented should have had a licence?

All bedsits and shared houses in buildings of three storeys or more and which are occupied by five or more people in two or more households must have a licence. Some local councils require other multi-occupied houses to be licensed too. Contact your local council to find out if your home should have a licence (or if you think it should have a licence, but it is not licensed). For more information on HMO Licensing see (only available online)

<http://www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple/publicationshouses/>

What is a Rent Repayment Order?

A RRO is an order made by a Residential Property Tribunal (RPT) which requires a landlord to repay to tenants, the rent paid for accommodation that was not licensed. The maximum amount that tenants can ask for is the total rent paid over a twelve month period, however the actual amount in the RRO could be much less.

RROs are made under Housing Act 2004, sections 73 and 74, see Annex 1 for full list of legislation.

As a tenant you can only apply for a RRO after:

- (a) your landlord has been found guilty in court of renting the accommodation without a licence, or
- (b) a RRO has been made for your landlord to repay housing benefits paid on the property.

Your local council's environmental health department or private sector housing team will let you know if either of the above has occurred.

Please note: Only private tenants can apply for RROs, this power is not available to council tenants or tenants of housing associations or arms length management organisations.

When should we apply to the tribunal?

You should apply for an RRO as soon as possible, as in most cases the amount you can claim will decrease as time goes on. The rent cannot be claimed after:

- the tenant has moved away
- the landlord has sold the house or flat, or
- the landlord has applied to your local council for a licence (and this could happen at any time).

In any case, the application for the RRO must be made within twelve months of the date of the successful prosecution, or the award of a RRO for housing benefit (see above).

Can I get help?

Tenants can get help from various organisations:

- Tenants and Residents Associations or Tenants Federations,
- Shelter
- Your local council's environmental health department or private sector housing team
- Citizen's Advice Bureau or a Law Centre
- other community organisations e.g. churches or mosques, black and ethnic minority groups or older or disabled peoples' group

If one tenant is willing to act for all the tenants in applying for the RRO the others only need to sign a declaration stating the name of the person they are appointing to act on their behalf, see Annex 2. Alternatively the person acting for

the tenants can be from one of the above local organisations or a friend or relative of one of the tenants, as long as the tenants trust that person to represent them.

In the first successful RRO case, the sixteen tenants (of two houses owned by the same landlord) were represented by an officer from Warwick's Students' Union see Annex 3.

How much rent can I reclaim?

Tenants can apply to reclaim the rent paid for a period of up to a maximum of twelve months ending on the date of the application to the RPT. You can ask to reclaim the rent for the full twelve months if you lived there and paid rent to the same landlord throughout this period. However the period for reclaim of the rent will end earlier if you have moved away, if the landlord has changed, or if the landlord has applied to the local council for a licence. Please note you cannot claim for any rent paid by housing benefit in your claim.

You will need to be able to prove that you actually paid the amount of rent you are claiming and who you paid it to. When you apply for the RRO you will need to send a copy of your rent book, if you have one, otherwise make a list of all payments made by each tenant, see Annex 5. Any tenants who go to the hearing should take proof of payment, for example, bank statements or cheque stubs, in case there is a dispute about the rent. If the landlord or the managing agent has acknowledged receipt of rent payments, say by email, you should include this as evidence.

The RRO is likely to require the landlord to repay less rent than the amount of rent that you are asking to reclaim, see below.

How do I make a claim?

Before applying for the RRO, you should make sure that you will be able to produce all the documents needed. These documents are listed in Annex 5.

You do not have to pay a fee for a RRO application.

You should make an application for a Rent Repayment Order to the Residential Property Tribunal (RPT). You can download the application form from the RPT website at http://www.rpts.gov.uk/pubs_and_forms/publications.htm or telephone 0845 600 3178 to ask for the form. See Annex 4 for guidance on filling in the form.

It is essential that you attach the following documents to your application, see Annex 5 for more details:

- (a) Evidence of the successful prosecution or RRO for housing benefits provide by your local council

- (b) Evidence of the rent paid during the period of up to twelve months. If the landlord did not give you a rent book or receipts for the rent and you have no other proof, make a list of all the rent payments you made and who they were paid to.
- (c) If you and/or any of the other tenants in the house have appointed someone to represent them include all the agreements to appoint that person to act on their behalf.
- (d) Evidence of five or more tenants living in the house during the period of the claim, unless stated in (b) above.

What happens next?

The RPT will send your application to the landlord. They will ask for five copies of the papers you wish to present at the hearing by a certain date, one of these will go to the landlord.

The papers for the hearing need to be in a bundle which is easy for the tribunal to refer to, for a list of the documents to be included see Annex 5. All the papers need to be put in date order, each page should be numbered and a list of contents with page numbers should be at the front. Once copied the papers need to be placed in a binding which will keep them in order. You may wish to get advice on preparing the bundle from one of the local organisations mentioned above.

The RPT panel members will usually visit the house or flat before the hearing. If you are at home when they visit, it is okay to talk to them, but do bear in mind that they will not take what you say into account when making their decision. They can only make their decision on the written evidence and what is said at any hearing.

You will normally get 21 days notice of any hearing. In some cases the RPT will make a decision without an oral hearing, but this would be unusual in the case of an RRO. In any case you would be sent a written record of the RPT panel's decision.

What is the hearing like?

The hearing at the Residential Property Tribunal is similar to a court hearing, but less formal. The case is heard by two or three panel members. The panel chairman introduces the case and explains what will happen; you can ask the chairman questions at any time if you need to. The panel members can ask the landlord and the tenants' representative questions throughout the case and take notes.

RPT panels generally hear cases without lawyers, but everyone does have the right to be represented by a solicitor or barrister or by some other person. Don't let this put you off, many landlords do represent themselves and the Chairman of the panel will help you if necessary.

All tenants who are making the claim need to be present unless they have appointed a person to represent them. We recommend that two or more tenants are there anyway, in case they need to answer questions about the rent, the accommodation, or any issues the landlord may raise about the behaviour of the tenants, see below.

If a number of tenants have applied for the RRO themselves, it is easier if they appoint a spokesperson to lead their case at the tribunal. Other tenants will still get the opportunity to speak if they want to.

The hearing starts with the tenants' representative (rep) saying why they have applied for the RRO he/she can simply read out the Grounds of the Application from the application form and introduce the evidence in the bundle. The landlord or his/her lawyer will ask questions of the tenant rep and then put their own case to say why the panel should not make an RRO or why it should be for less money than is claimed. The tenants' rep will then be able to question the landlord, or comment on what has been said. Other tenants will be able to have their say too.

The panel will not make their decision at the hearing. A written decision will be sent in the post within a few weeks.

The landlord and the tenants can appeal to the Lands Tribunal against a RRO, including the amount of money to be repaid, but must apply within 21 days. If the appeal to the Lands Tribunal involves a hearing the same tenants who were at the RPT hearing, will need to be there, the procedures are similar to those for the RPT.

More information on RPT procedures can be found in the RPT Guide to Houses in Multiple Occupation Licensing Cases at http://www.rpts.gov.uk/pubs_and_forms/pdf/HMO_Booklet.pdf. or telephone the RPT on 0845 600 3178 for a copy.

How much rent will be repaid?

The RRO has the discretion to decide the amount of money the landlord must repay in the RRO. This amount is unlikely to be the amount of rent claimed by the tenants. In the Warwick case the tribunal said that tenants had benefited from "above-average student accommodation; and that to order the repayment of the total rent paid would result in an unjustifiable windfall to the applicants." Here the RRO required the repayment of £18,540 to the sixteen tenants: this was 50% of rent which been paid.

The Tribunal has to decide on an amount they consider to be reasonable for the RRO, this decision will be based on the:

- amount of rent paid
- conduct of the landlord (how well he/she manages the accommodation and its condition)
- landlord's income, and
- conduct of the tenants in relation to the accommodation (you, or your representative, will have the opportunity to comment on what is said, so it is important to be prepared for this).

How will the money be paid?

The RPT will set a date by which the RRO money must be paid to the tenants; they may agree to the landlord paying the money in instalments.

What if the landlord doesn't pay up?

If the RRO payment is not received by the agreed date the tenants can apply to the County Court for permission to reclaim the money as a civil debt (see The Residential Property Tribunal Procedure (England) Regulations 2006, regulation 34). A housing advice agency, Citizens Advice Bureau or solicitor can advise on this procedure.

Can my landlord evict me?

Your landlord has no right to make you leave your home because you are applying for a RRO. If your landlord does try to evict you, you should seek legal advice, there are extra restrictions on landlords powers to evict, where the accommodation is not licensed, see Housing Act 2004, section 75.

Conclusion

Tenants can reclaim up to twelve months rent in a RRO where a landlord has been found guilty in court or in a tribunal of renting their accommodation without a licence. The procedure involves gathering evidence and appearing before a tribunal, but not all tenants need to do it themselves. One tenant can be appointed to represent the other tenants and various local organisations can help in the process and may be willing to represent the tenants. Tenants should apply for an RRO as soon as possible after the successful prosecution or RRO for housing benefits, as in most cases the amount of rent that can be reclaimed will reduce as time goes on.

Please note: This advice has been produced in consultation with experienced housing practitioners. It is not statutory guidance, so should be read in conjunction with the law. The advice may be subject to challenge by the Courts or the Residential Property Tribunal.

The Laws on Rent Repayment Orders

Housing Act 2004 http://www.opsi.gov.uk/acts/acts2004/ukpga_20040034_en_1
Section 73 Other consequences of operating unlicensed HMOs: rent repayment orders.

Section 74 Further provisions about rent repayment orders

Please note: Sections 73 and 74 apply to licensing of HMOs, sections 96 and 97 apply the same legislation to other residential accommodation requiring a license under a Selective Licensing Scheme, these are very rare.

The Residential Property Tribunal Procedure (England) Regulations 2006
(Statutory Instrument 831/2006) Regulation 18.

The key part of the above law for tenant applications for RROs is:

Section 73 (8)

If the application is made by an occupier of a part of the HMO, **the tribunal must be satisfied as to the following matters—**

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of a part or parts of the HMO,

(b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and

(c) that the application is made within the period of 12 months beginning with—

(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

If you do not have access to the internet, these documents can be purchased from The Stationary Office, by calling 0870 600 5522, or you may be able to view them at your local library.

**Authority to Act on Behalf of Tenant
in application for Rent Repayment Order**

I [name of tenant] of [address of tenant] {formerly of [address of unlicensed house or flat]} authorise and give my consent to [name of representative] [organisation of representative or address of representative] to act on my behalf in the process of applying for a Rent Repayment Order to reclaim the rent paid at [address of unlicensed house or flat] which was operated without a licence.

I request that those who it may concern provide my representative with all relevant information and I authorise them to discuss my case with them.

Signed:

Name:

Date:

Students' success: the first Rent Repayment Order

Sixteen students at the University of Warwick claimed back a total £18,540 of rent which they paid to their landlord for the two houses they lived in from September 2006 to June 2007. This is the first RRO to have been secured since the Housing Act 2004 came into force, in April 2006.

The council wrote to the landlord on numerous occasions to advise him that two of his HMOs would require a licence under the mandatory licensing regime, but applications were not forthcoming. Visits were made to both HMOs in the autumn of 2006 to confirm that they were indeed occupied by five or more people, forming two or more single households, and evidence was gathered.

The landlord was found guilty of operating both HMOs without licences by Stratford-upon-Avon Magistrates' Court. The council immediately notified the occupiers of both HMOs of the successful prosecution and advised them that they were able to make a claim to the Residential Property Tribunal for a Rent Repayment Order. Fortunately, the council has a good relationship with Warwick University Students Union, and their Welfare Officer. The Welfare Officer was briefed by the council on the position, and he decided, in consultation with the tenants, that it would be worthwhile to make an application for a RRO.

The Tribunal inspected the properties, and heard representations from the Welfare Officer, representing the students, and the barrister representing the landlord. Of much significance to the Tribunal was the failure of the landlord to apply for HMO licences and his subsequent conviction in the Magistrates' Court. After deliberation, the Tribunal decided that a refund, equivalent to 50 per cent of the rental income, would be reasonable; this amounted to £18,540 to be repaid to the sixteen tenants. The landlord was allowed to pay in instalments over a six month period.

Application Form to the Residential Property Tribunal for a Rent Repayment Order

You can download the application form from http://www.rpts.gov.uk/pubs_and_forms/pdf/HMO_Licensing_app.pdf or telephone 0845 600 3178 to ask for the form.

Most of the questions are straight forward, but please note:

Question 4: the **respondent** is your landlord and needs to be the same person or company or other organisation who was found guilty in court or who was required to repay housing benefit money under a RRO.

Question 7: the **type of application** is “An application by an occupier for a Rent Repayment Order under Housing Act 2004 Section 73(5).”

In the **Grounds of the Application** you will need to say:

“This application for a rent repayment order follows the {conviction of [respondent’s name] on [date] for running an unlicensed house in multiple occupation} {making of a rent repayment order on [date] requiring [respondent’s name] to repay rent paid as housing benefit paid for accommodation} at [address of house or flat].

Rent amounting to £xxx was paid, by the tenants living at [address], to [respondent’s name] [agent of the respondent Mr/Ms xxxxx] {during the twelve months ending on the date of this application} {during the period between [date twelve months before this application] and [date you moved/landlord changed/licence application was made]}. This amount does not include rent paid for by housing benefits.”

Remember you will need to send some of the papers listed in Annex 5 with your application form.

Annex 5

List of documents needed for a Rent Repayment Order

The following papers need to be provided either with the application for the RRO or in the bundle for the hearing. The original documents should be kept by the tenants or their representative and will need to be available at the hearing.

Evidence to show:	Details to be included	Format	Who can help	When needed
1. A successful prosecution or RRO for Housing Benefits	Date of prosecution or RRO, amount of fine, name of person or organisation responsible (must be same landlord stated in your RRO application).	<ul style="list-style-type: none"> • housing benefits RRO, or • press cutting or press release, or statement from council officer. 	Council Environmental Health or Private Sector Housing Team.	With application
2. Rent paid by the tenants during the period of twelve months up to the date of application for the RRO or rent paid until date you moved/ landlord changes/ licence applied for.	<p>For each tenant:</p> <p style="padding-left: 40px;">Dates when rent was paid, Amount paid Who it was paid to.</p> <p>Do not include any rent paid by housing benefits.</p>	<ul style="list-style-type: none"> • rent book, or • receipts for rent, or • table listing all payments, or document from landlord or agent stating rent payments are up to date. 	If the rent is paid to an agent, ask if they can confirm that the rent is up to date.	With application, Also take bank statements and cheque stubs (if paid by cheque) to the hearing.
3. Tenants' agreements to appoint another person to act on their behalf (where relevant)	See Annex 2	.		Obtain as early as possible. Send with application.

4. Completed application form sent to the RPT	See Annex 4			Bundle for hearing.
5. Correspondence with the RPT		Letters or emails received and sent.		Bundle for hearing.
6. Tenancy agreement, if provided when you moved in.			Other tenants.	Bundle for hearing
7. Evidence to show five or more tenants, if not shown in 2 or 6 above.	Tenants names and dates they lived in the house or flat for the period the rent is being claimed.	List	Other tenants and tenants who have moved out.	Bundle for hearing.
8. Statement from Council Officer (optional).	This could include: <ul style="list-style-type: none"> • details of the successful prosecution or housing benefits RRO • letters inviting the landlord to apply for a licence • details of any licence application made • landlord's history of compliance any details of landlords income raised in the above court or tribunal hearing		Council Environmental Health or Private Sector Housing Officer.	Bundle for hearing