



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

Case Reference : **LON/OOAM/HMG/2021/0026**

Property : **106 Stellan close, London E5 8QZ**

Applicant : **Abuhayat Er and Ural Er**

Representative : **Ms Sherratt- Justice for Tenants**

Respondent : **Ms Tanveer Akhtar**

Representative : **In person with assistance from her
brother Mohammed Rajab**

Type of Application : **Application for a Rent Repayment Order**

Tribunal Members : **Judge Jim Shepherd
Jane Mann MCIEH**

Date of Determination : **9th February 2022**

Determination

1. In this case the Applicants, Mr and Mrs Er seek a rent repayment order against the Respondent Tanveer Akhtar.
2. The Applicants were tenants of premises at 106 Stellan close, London E5 8QZ (the premises). The premises consist of a two-storey terraced house where the living room has been turned into a bedroom, making 5 bedrooms in total, with a shared kitchen and bathrooms. It is the Applicants' case that the premises were occupied by at least three people forming more than one household at all points during the relevant period of 1 October 2018 to 30 September 2019. Indeed, it is the Applicants' case that the premises were occupied by five or more people during this period.
3. The Applicants' occupation of the premises began on 17 June 2017. They had a series of tenancies. From this date they shared the premises with four other tenants. Mr Donovan Viatalis still resides at the premises. The Applicants were not related to any of the four other occupiers.
4. It is the Applicants' case that the Respondent did not have a licence for this house in multiple occupation. They say that the premises were caught by the Mandatory HMO licensing regime and/or by the additional licensing scheme that was in force in Hackney from 1 October 2018. A letter from the private sector housing unit of Hackney Council dated 16 February 2021 confirms that a visit had taken place on 7 July 2020 at which the premises were assessed to be an unlicensed HMO.
5. In addition to their licensing allegations the Applicants rely on the fact that the Respondent failed to ensure that the property was kept in a suitable and safe condition. There were problems including rubbish accumulation in the rear

garden, mould and water leakages. Photographs show the extent of the accumulation of rubbish and the damp on the plaster in the bedroom occupied by Mr and Mrs Er. A property inspection undertaken by Hackney Council on 7 July 2020 showed the kitchen and bedroom doors were not the 30 minute resistant type and did not have self - closures. There were no smoke alarms. In addition, the Respondent failed to ensure the Applicants' deposits were protected in a deposit protection scheme.

6. The rent repayment order sought by the Applicants amounts to £6760.00 for the period 1 of October 2018 to 30 September 2019 ("The relevant period"). From 5 August 2020 the Respondent applied for an HMO license. The applicants also seek reimbursement of the application fee and hearing fee totalling £300.00

The law

7. The Housing Act 2004 , s.72(1) states:

(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.

8. The Housing Act 2004, s. 61(1) states:

(1)Every HMO to which this Part applies must be licensed under this Part unless— (a)a temporary exemption notice is in force in relation to it under section 62, or (b)an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

9. Section 55 of the Housing Act 2004 states: Licensing of HMOs to which this Part applies (1)This Part provides for HMOs to be licensed by local housing authorities where— (a)they are HMOs to which this Part applies (see subsection (2)), and (b)they are required to be licensed under this Part (see section 61(1)). (2)This Part applies to

the following HMOs in the case of each local housing authority— (a)any HMO in the authority’s district which falls within any prescribed description of HMO, and (b)if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

10. The Licensing of Houses in Multiple Occupation Order 2018 prescribe HMOs as follows:

Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.

The hearing

11. Ms Er gave evidence to the tribunal confirming that she and her husband moved in during 2017 and identifying the tenancy contracts in the bundle. She and husband were still living at the premises. She showed bank statements showing proof of payment and WhatsApp messages from the landlord confirming that the rent was up-to-date on 10 March 2021. She described how at the start the tenancy she'd made a

complaint about three boys in one of the rooms who were making a lot of noise at 3 am playing online games. The Respondents brother had shouted at her after being called to the house and she called the police. She confirmed that her deposit was not protected and had not been returned to her. She stated that the landlord never gave receipts for the rent all. Some arrears had built up during lockdown when rent was withheld in order to obtain a tenancy contract but the arrears had now been cleared and this was confirmed in the WhatsApp messages. They were not eligible for universal credit so no deductions were due in relation to them. She said that the property was in a poor condition when they moved in as evidenced from the photos. Also, there was mould in their room because there was not much air circulation. In addition, the windows were in poor condition and remain so to date with one window that could not be opened. Further there was a problem of water coming through the ceiling from the shower above making the electrics in the laundry room unsafe. There was also a problem of mice and rats and pest control were called. The Applicants originally reported this to the Respondent who told them to kill the rat in the premises. They were forced to call pest control themselves. The pest control contractor identified holes in the kitchen cupboards leading to the neighbouring property which needed to be fixed to stop pests coming in. Ms Er said the Kitchen was very old. The council had visited and found no fire doors or smoke alarms..

12. The Respondent's brother Mr Rajab made submissions on her behalf as her English is limited and he had been managing the property. He said that the leak had been repaired within 24 hours and he had provided an electrical certificate and gas certificate. He said there may have been water in the light bulb and he intended to change it. He said that the premises were infested because the tenants did not keep the Kitchen clean . He said after the council's visit the doors had been changed to fire doors and the ceiling was sorted out with smoke alarms being fitted He complained that the Applicants had not given access to their room in order to carry out repairs and/or safety measures such as replacing the lock, fitting a smoke alarm and repairing windows. He also said that damp was caused by tenants drying clothes in the room on their radiator and he had now provided a tumble dryer. He said the builders let him down because they took two months to do works when it should have been weeks. He said his sister had bought the property on a buy to let mortgage in 2009 and it was

originally rented out to one family. He said that somebody called Mr Waheed had let him down in his advice as to whether a licence was needed. He confirmed he had managed the property from 2019. He said he had to get work done prior to obtaining a licence. He confirmed that the licence was granted in August 2020. He confirmed that the rent payments were now up to date but said there had been substantial arrears over a 6 month period and no interest payments had been charged for the delayed payments.

13. In closing Ms Sherratt for the Applicants said the offence had been committed as there were at least three tenants forming more than one household at the property at all times. There had been a lot of turnover of occupiers over the years. In relation to conduct she said that the Respondent had no prior convictions. There was no evidence in relation to the Respondents financial circumstances. She said the starting point was rent paid in the relevant period but there was no presumption that the maximum rent would be awarded. She said in this case she sought a maximum award or a substantial amount. Although the applicants had withheld rent at one point the rent was now up to date and in any event the landlord's conduct outweighed this conduct. She said the failure to license was a serious breach and the landlord had not applied for the licence immediately after being aware of the need to have one. She said that the Respondent had no process in place to keep up-to-date with the law. She only applied for a license when the Environmental Health Officer visited. In effect she took two years to make the application. Further she said that the premises were not in a good condition as evidenced by the photographs .She said that if the Tenants had poor conduct the 6 month tenancy agreement would not have been repeatedly renewed. She said the applicants also request reimbursement of the application and hearing fee under rule 13.2 because the costs would not have been incurred if the landlord had not committed the offence of failure to licence the property.

14. Mr Rajab said that when they all realised that they needed a licence they had sorted this out within a year. He accepted liability on behalf of his sister that said that rent had not been paid for a period of time but was now up-to-date. He denied the poor

condition of the premises. He said Ms Er can be quite confrontational with other tenants which had contributed to some of them leaving the property.

Determination

15. The Tribunal has no hesitation in finding that the Respondent is liable to pay a rent repayment order to the Applicants. The Tribunal is satisfied that the property was occupied by Mr and Mrs Er and Mr Donovan Viatalis to whom they are not related throughout their tenancy and that a number of other tenants also occupied the other bedrooms in the property. An HMO licence was required under the additional licensing scheme in force at Hackney during the relevant period. Alternatively, a Mandatory HMO Licence may have been required if there were 5 or more tenants throughout the relevant period but the evidence of this was less conclusive. The Respondent accepted that a licence was required and provided no reasonable excuse for failing to apply for a licence. She failed to ensure that she was up-to-date with legislation and failed to update her knowledge in relation to the licence. The premises were also in a poor condition as evidenced by the photographs provided by the Applicants. Whilst the Applicants withheld rent for a period of time by the date of the hearing the arrears were clear. In all of these circumstances the starting point is to apply the maximum rent level. The question then is whether to make any deductions from that amount. The Respondent provided no evidence in relation to her financial circumstances and as indicated the balance of conduct weighed heavily against her because the premises were in a poor condition and she failed to keep herself up-to-date with the requirement for a license. Accordingly, the Tribunal finds that the appropriate measure of the rent repayment order is the full rent over the relevant period which amounts to £6760.00. The Tribunal also awards the application and hearing fees which amount to £300.00. This gives a total award of £7060.00 This sum must be paid within 14 days.

Judge Shepherd

9th February 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.