FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/HMG/2021/0035**
Property	:	**107 Stanhope Street, NW1 3LR**
Applicants	:	**Nimish Madhure, Zsombor Antal Jancso, Richard Gao and Brian Li**
Representative	:	**Justice for Tenants – Ms Sherratt**
Respondent	:	**Serkan Daysak**
Representative	:	**Mr Barlow**
Type of Application	:	**Application for a Rent Repayment Order**
Tribunal Members	:	Judge Shepherd Steve Wheeler MCIEH
Date of Determination	:	11th July 2022

Determination

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1. In this case the Applicants, Nimish Madhure, Zsombor Antal Jancso, Richard Gao and Brian Li (" The Applicants") are seeking a rent repayment order

against the Respondent, Serkan Daysak ("The Respondent") in relation to premises at 107 Stanhope St, London NW1 3LR ("The premises").

2. The application was made pursuant to section 41 of the Housing and Planning Act 2016 on the grounds that the Respondent had control of or was managing an unlicensed HMO pursuant to part 2, section 72 (1) Housing act 2004 and that this was an offence under section 40 (3) Housing Act 2004. It's the Applicants' case that the premises are situated within an Additional Licensing Area as designated by the London Borough of Camden. This additional licensing scheme came into force on 8 December 2015 and ceased to be operative from 8 December 2020. A new designation came into force on 8 December 2020 and will cease to be operative from 8 December 2025. The relevant licensing scheme applied to all HMOs that are occupied by three or more persons comprising two or more households and HMOs as defined in section 257 of the Housing Act 2004. It is the Applicants' case that the additional licensing schemes applied to the whole of the district of Camden. The premises were located within this area and therefore the additional licensing scheme applied to the premises.

3. It is also the Applicants' case that the premises were let out to 4 people during the relevant period and therefore constituted an HMO in accordance with the self-contained flat test detailed in section 254 Housing Act 2004. The Applicants say that the premises were not licensed at any point during the relevant period nor was a licence application for the property made. Accordingly, a claim of £37,047.64 is made against the Respondent for rent paid during the relevant period of 18 September 2019 to 17 September 2020 ("the relevant period"). None of the Applicants received housing benefit or universal credit rent contributions for the property. It's the Applicants' case that the tenants formed more than one household who occupied the property as their main residence and shared amenities.

4. A tenancy agreement dated 17 September 2019 shows the Respondent as the landlord and the Applicants as tenants. It is stated that the maximum number of permitted occupiers are four. The rent is said to be £3293.33 per month. A deposit of £3800 was required. An addendum to the tenancy agreement dated 3 October 2019 adds Brian Li as a tenant.

5. A table of rent paid shows the total reclaimable rent to be £37,047.64. Bank statements show payments by the tenants to the landlord. A notice of designation of an area for additional licensing of houses in multiple occupation confirms the designation of the area which includes the premises as an area of additional licensing.

6. In support of their application the Applicants state that the Respondent is a property manager which poses a number of legal duties upon him. Because the premises were not licensed the Respondent had not carried out essential fire safety works at the premises and that he had breached a number of duties including failing to return the Applicants' deposit, breaches of the regulations pursuant to fire and health and safety etc.

7. In a short witness statement one of the Applicants, Mr Jansko states that the Applicants found the premises through the Black Katz agency in London. The Applicants are all students at University College London. The premises are a two - floor building with four rooms being used as bedrooms. There was a bathroom with a shower and a toilet. There was also a shared kitchen and the reception room had been turned into a bedroom. The Applicants moved in on 20 September 2019. Occasionally someone from the agency would visit they didn't give notice but it was usually to show tenants one of the rooms that was coming available. After the coronavirus pandemic started the Respondent gave a significant and they thought non -repayable discount on the months rent from April 2020. When they moved out the Respondent decided to deduct all the difference between the discounted payments and the original payments from their deposit. The Respondent informed the Applicants about

the deduction over a month after they moved out of the property despite the contract saying that they should have agreed any deduction in 10 days after the end of the tenancy. The Applicants have separate actions against the landlord for deducting sums from their deposit and not protecting the deposit.

8. In his response to the Applicants' case the Respondent denies that he is a professional landlord. He says that in 2019 he instructed Black Kats to let the property and they were acting as his letting agents for three years. He says Black Katz are established and experienced in the letting market. They did not advise him that he should or would need to apply for an HMO licence. He says that he was completely reliant on the agency and relied on the fact that they would let him know that if he was not complying with the law. He says that at no stage had the Applicants raised any complaints about the property. He says that Black Katz continued acting as letting agents after the Applicants left the property and again did not advise the Respondent of the need for an HMO licence. He says the first that he knew about the need for a licence was in April 2021 when Owen Evans at the London Borough of Camden contacted him to tell him that he needed a licence. He says at the time of letting the property the Applicants he was away in Turkey for an operation to remove a tumour in his throat. He says that on 21 July 2021 London Borough of Camden served him with notice of intent to impose a financial penalty, in fact there were three notices served with different fines imposed. Subsequently London Borough of Camden agreed to reduce the fines.

9. The respondent said that the crucial question for the Tribunal was whether he had a reasonable excuse for continuing to manage and control the premises an HMO. He relies in support of his defence on the fact that the council did not prosecute him and did not apply for an interim management order. He also states that the property was not a risk to health and safety or the welfare of the Applicants. He said that Camden must have formed the view that he would be granted an HMO licence in the future. He said that he managed the property appropriately in accordance with the regulations and during the Applicants'

stay they did not complain or raise any concerns over health and safety issues. He said that he had the relevant gas and electric safety certificates and he addressed the council's concerns raised in their notices. In relation to the Applicants' conduct he said that he incurred redecorating expenses because the Applicants had applied wallpaper and pictures to the wall without his consent. In mitigation he said he was not a professional landlord and he relied on the agent in full. He also relied on his personal circumstances at the time i.e. his health issues which he said were mitigating factors.

10. At the hearing Clara Sherratt appeared on behalf of Justice for Tenants who were acting for the Applicants and Craig Barlow appeared on behalf of the Respondent. Ms Sherratt confirmed that the period of claim was the 18th September 2019 until 17 September 2020. She took the tribunal to the tenancy agreement and explained that Brian Li had joined as a fourth tenant. The proof of breach she relied on what's an email from Camden Council dated 25 March 2021 stating that the premises did not have a licence and had never had a licence. The email also stated that if there are three or more unrelated persons in the premises the landlord would be committing an offence of operating an unlicensed HMO. Ms Sherratt confirmed that the Respondent applied for a licence on 9 August 2021 by which time the Applicants had moved out of the premises.

11. Antal Jankso gave evidence for the Applicants. In cross-examination he was accused of causing damage to the walls in the premises. He denied this. He said the premises were in a reasonable condition when they moved in. He knew the premises had to be licensed and he was assured that they were. He hadn't complained about the condition of the premises. He was accused of damaging the fridge but he said it wasn't damaged. He conceded that the oven had been left dirty. He was told that the landlord had had to spend £2000 on the premises after the Applicants had moved out. He denied that the applicants had caused that much damage and they'd only been told about the sticker on the wall. It was alleged that he and the Applicants had damaged

chairs, he denied this and said they were in poor condition originally. He accepted that they'd been given a covid discount but said it was deducted from the deposit at the end of the tenancy.

12. The Respondent gave evidence. He said that kitchen door handle had been damaged, some chairs broken, the walls damaged and the locks were not working. He presented an invoice for the work that he carried out after the tenancy. He said he owned three other properties that he did not rent out. He had been renting the premises out for six years he bought in 2014. He involved Black Katz and denied he was a professional landlord. He said he didn't know about the licensing scheme

13. In closing Mr Barlow said that his client had not been prosecuted for any offences and the fines had been reduced by the Council and his client had applied for an HMO licence. He said there had been some damage to the property by the Applicants and he said that the appropriate discount was a 30% discount. In response Ms Sherratt said that the reasonable excuse defence did not apply. The Respondent claimed he was not a professional landlord and relied on third parties telling him when it's not part of their agreement. Further she stated that he was an experienced landlord. She said that there was no reduction necessary on the basis of financial circumstances because the Respondent had not disclosed any evidence about his own circumstances. She said that he owned four properties. She said that although the tenants paid late there were no arrears. The alarms in the premises had not been checked and the premises were not in a good condition when the Applicants moved in. In summary in relation to the conduct of the landlord she relied on the failure to license itself, the lack of procedures to check the licensing requirements and the risk to the Applicants. As a result she asked for the maximum amount of award that could be awarded. She also asked for the hearing fee and the application fee.

Determination

14. It is clear that the premises were an HMO and should have been licensed but were not licensed during the relevant period. The Respondent sought to pass blame to the agents Black Katz without substantiating the fact that it was part of their remit to advise him of his responsibilities in relation to licensing. He didn't provide any evidence of his agreement with Black Katz.

15. The fact remains that he is the responsible party and he failed to ensure that he was up to speed with the requirement to license his premises. The Upper Tribunal have made the position clear in the case of *Aytan v Moore* [2022] UKUT 27 (LC):

40. We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.

16. There was no evidence submitted on behalf of the Respondent of the type referred to here. Indeed, it was not clear whether Black Katz performed anything more than a letting agent's functions. On its face it was for the Respondent to ensure that he was complying with the law. He didn't do that even though he had been letting the property for a reasonable period of time. Neither apparently did he seek to ensure that his knowledge of the licensing regime was up to date. The whole purpose of the licensing regime is to ensure that HMOs are let in a safe state. If properties are not licensed they are unmonitored. The fact that the council fined the Respondent on discovering the illegality is not any form of mitigation. It merely demonstrates the seriousness of the breach. Neither can it be said that the Applicants were not

at risk and therefore a fine is not justified. The evidence was unclear on this point and in any event the fact remains that the property was unlicensed throughout the relevant period and apparently after that until a license was finally applied for after the local authority had discovered the illegality. The Tribunal were not impressed by the Respondent's attempts to deflect blame onto the Applicants for failing to raise the license issue during the tenancy or for allegedly damaging property within the premises. There is no requirement for a tenant to alert his landlord that he needs a license. The evidence on the property damage was at best equivocal. It seems likely that any damage was wear and tear.

17. The Tribunal has a discretion as to the penalty it awards. There is no requirement to award the maximum amount. Mr Barlow urged a 30% deduction but there is no real basis to make that deduction. The fact remains that this was a clear breach. The Tribunal were not given any details as to the Respondent's financial circumstances. We consider in these circumstances that the maximum award should be made. Hopefully this will be a salutary lesson for the Respondent and he will ensure that his properties are let legally in future.

Summary

The Respondent shall pay the Applicants £37,047.64 within 28 days. He shall also pay the Applicants application fee and hearing fee totaling £300 within the same period.

Judge Shepherd

11th July 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.