FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/HMF/2022/0035**
Property	**:**	**Flat 14, Aberdeen Mansions, Kenton Street, London WC1N 1NN ("the premises")**
Applicant	**:**	**Arpana Giritharan** **Louisa Norton** **Zahara Sulaiman**
Representative	**:**	**Cameron Neilson,** **Justice for Tenants Ref:12763.**
Respondent	**:**	**Mohammed Abdul Salique**
Representative	**:**	**Abul Kalam Salique (son of Respondent)**
Type of Application	**:**	**Applications for a Rent Repayment Order by Tenant – Sections 40, 41, 43 44 & 45 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge HD Lederman** **Mr E Shaylor MCIEH**
Date and Venue of Hearing	**:**	**23 June 2023** **Fox Court Brook Street London**
Date of Decision	**:**	**20 July 2023**

DECISION AND REASONS

Decision of the Tribunal

The Tribunal:

a. Orders the Respondent to make payment of a total amount of £12,107.20 to all Applicants jointly as a Rent Repayment Order ("RRO") under section 43 of the Housing and Planning Act 2016 ("the 2016 Act") for the period between 21st September 2020 and 20th August 2021 (inclusive).

b. Orders the Respondent to reimburse the Applicants application and hearing fees amounting to a total of £300.00 within 14 days of the date of this Decision.

Reasons

Preliminaries

1. In these reasons, references to the page numbers in the Applicants' Bundle (consisting of 116 numbered pages) are described as A [ ]. That bundle also contained lengthy legal submissions. The Applicants submitted a further bundle unhelpfully numbered 1-25 described as "Response to Respondents submissions" accompanied by a statement of truth signed by Ms Sulaiman and Ms Norton dated 27 07 2022. A separate witness statement from the First Applicant was incorporated into A[101-105.]

Further Documentary evidence

2. The Respondent initially submitted a bundle of 44 (paginated) documents including his witness statement and Statement of Case each dated 12 07 2022. On 15th June 2023 he submitted a second witness statement accompanied by 8 numbered pages and a skeleton argument and a copy of authorities dated 14th June 2023.

3. The Applicants through their representative did not object to the introduction or admissibility of the more recent documents produced on behalf of the Respondent

4. In the course of the hearing the Respondent also sought to introduce further documentary evidence of his financial position which has not been disclosed previously. The Tribunal declined to give permission for introduction of documents at that late stage as directions for disclosure had been given previously in April 2022 but permitted his representative to give details of his outgoings orally.

Status of these reasons

5. Where narrative, facts or descriptions are recited, they should be treated as the Tribunal's findings of fact unless stated otherwise. These reasons address in summary form the key issues raised by the application. They do not rehearse every point raised or debated. The Tribunal concentrates on those issues which go to the heart of the application.

6. The Tribunal Judge ensured before and during the hearing that all parties had copies of the documents relied upon as described above. All parties

were offered the opportunity of a short adjournment during the hearing and before closing submissions (closing summaries).

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The Application

7. The Tribunal is required to determine an application received on 2nd February 2022 under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a Rent Repayment Order ("RRO") in respect of the premises. It is common ground the premises comprised a three bedroom flat with shared kitchen and shared bathroom/wc in a purpose built block of flats in the Bloomsbury area of central London where the superior landlord and managing agent of the block was the London Borough of Camden ("Camden"): see the Applicants' submissions paragraph 6 [2]. (The third bedroom was formerly a living room and had been converted)

The Hearing and the participants

8. All parties attended the hearing in person. The Tribunal checked that all parties had the same copies of the bundles and documents before the hearing started. The Respondent was represented by his adult son who asked to be known as "Sunny" and was so described in some of the text messages referred to in the documents. Sunny also undertook a role in responding on his father's behalf to requests for repairs from the Applicants whilst they were in occupation. The Respondent attended and participated fully in the hearing by asking and answering questions. The Applicants were represented by Mr Neilson who is extremely experienced in applications of this kind but is not a qualified solicitor or Barrister. The Tribunal did not explore with Mr Neilson who was responsible for the drafting of the Applicants' witness statements of 27 07 2022 which made allegations of serious misconduct against the Respondent. The Tribunal's comments about those allegations should only be taken to be directed to the persons responsible for approving or preparing those statements.

9. The Tribunal Judge checked throughout the hearing that the Applicants and Respondent understood the issues. The Respondent and Sunny although intelligent and articulate were litigants in person with little legal expertise although they had had access to some informal legal advice before the hearing which enabled the Respondent to make sensible concessions in writing before the hearing. The Tribunal made sure the Respondent understood the questions and the issues and fully participated in the hearing.

Agreed facts

10. It was common ground that each of the Applicants (who knew each other as students at a university in the vicinity of the premises) occupied the premises as the Respondent's tenants between 21st September 2020 and 20th August 2021 and paid rent in total amounting to £30,268.00 for that period: see Respondent's Statement of Case R[1-2]. It was also agreed that the Applicants' occupation of the premises as unrelated individuals fell within the scope of the definition for the entire relevant period of a House in Multiple Occupation within Camden's Additional Licensing Scheme

then in force as extended on 8th December 2020: see A[72-80] (copies of the Designation and Extension) and the Respondent's Statement of Case at R[1-2].

11. Sunny had obtained a degree in civil engineering and worked as a project manager. The Tribunal formed the view that at the date of the hearing, having taken professional advice albeit on an informal basis that both Sunny and the Respondent had a fully informed understanding of the issues and the significance of the agreed facts. It is an entirely different question whether the Respondent or Sunny had the relevant knowledge at an earlier stage.

12. The following issues arose:

a. Can the Applicants satisfy the Tribunal beyond reasonable doubt (so that the Tribunal is sure) that the Respondent had committed the criminal offence of being a person having control of or managing the premises when they were a House in Multiple Occupation (an "HMO") was required to be licensed but was not so licensed contrary to section 72(1) of the Act *during the relevant period*; in particular whether the defence that the Respondent had a reasonable excuse for having control of or managing the premises as an HMO without a licence under section 72(5) of the Housing Act 2004 ("HA2004")
b. If an offence was committed by the Respondent, should the Tribunal exercise its discretion to make an RRO?
c. If so what should the amount of the RRO be (by reference to any offence or offences found to have been committed) taking into account:

(a)the conduct of the landlord and the tenant,

(b)the financial circumstances of the landlord, and

(c)whether the landlord has been convicted of an offence.

(d) the period during which any relevant offence was found to have been committed (if applicable)

d. the offence must have been committed in the 12 months ending on the day when the application for an RRO was made: see section 41(2)(b) of the 2016 Act.

Inspection

13. None of the parties contended the Tribunal needed to inspect the premises. The Tribunal considered an inspection was not proportionate or necessary to determine the issues.

Was the offence under section 72(1) of the Act committed by the Respondent?

14. In the light of the agreed facts this boiled down to 2 separate questions, as it was common ground that the Respondent had not been convicted of the offence (or any offence). Firstly whether the Applicants could satisfy the Tribunal so it was sure that the Respondent was a person managing or in control of the premises during the relevant period within the meaning of section 72(1) of HA 2004. Secondly whether *the Respondent can show* to the civil standard of proof (the balance of probabilities) that he had a reasonable excuse for managing or being in control of the premises as an HMO without a licence.

Managing or having control of the premises?

15. Mr Neilson drew attention to the provisions of section 263 HA 2004 which provide the following definition of Managing or having control for the purpose of section 72(1) HA 2004 so far as relevant to this case:

> (1) In this Act "person having control" , in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
> (3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–
>
> (a) receives (whether directly or through an agent or trustee) rents or other payments from–
>
> (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
>
> .....or
>
> (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
>
> and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
>
> ....."

16. It was not disputed that the rental payments for the premises were made to the Respondent by the Second Applicant on behalf of all 3 Applicants: see for example the deposit payment evidenced by her bank statement at A[51-56]. Mr Neilson argued that the Respondent's status as long leaseholder meant that he was a person who would receive the rack rent if let at a rack rent under section 263(1) HA 2004. The official copy of the land register at A[57-59] confirmed the Respondent was the proprietor of the long lease of the premises subject to a mortgage in favour of Godiva Mortgages Limited.

17. Accordingly the Respondent was deemed to have control of the premises

for the purpose of section 72(1) HA 2004 for the relevant period during which the premises were occupied as an HMO by the Applicants and should have had a licence.

Has the Respondent established that he had a reasonable excuse for Managing or having control of the premises without an HMO licence

18. To understand the Respondent's position about this it is necessary to consider his account of how the premises came to be let to the Applicants without an HMO licence.

19. The Respondent drew attention to guidance upon the meaning of "reasonable excuse" in *Marigold v Wells* [2023] UKUT 33 (at [48]):

> "First, establish what facts the landlord asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the landlord or any other person, the landlord's own experience or relevant attributes, the situation of the landlord at any relevant time and any other relevant external facts).
>
> Second, decide which of those facts are proven.
>
> Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the landlord and the situation in which the landlord found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the landlord did (or omitted to do or believed) objectively reasonable for this landlord in those circumstances?"

20. In essence the Respondent contended that he expected his letting agents Oakford Estates would have provided him with advice about the need for an HMO licence. This is the effect of paragraph 4 of his witness statement of 14 06 2023 as follows:

> "The Respondent had arranged for Oakford Estates Limited to let the flat. They were a local firm of estate agents and the Respondent had a reasonable expectation that they would ensure that the tenancy would comply with all statutory requirements. The Tribunal is asked to consider whether the Respondent has established a reasonable excuse for having control of or managing the flat as an HMO without a licence (see section 72(5) of the Housing Act 2004)."

21. The Respondent's witness statement of 12 07 2022 at paragraphs 8 – 18 contained the following passages which were relevant to that contention:

> "8. Initially, when we moved to Charlack Way [sic], I retained one room at the flat as I worked anti- social hours at Diwana. I

let out two rooms.

9. In September 2017, I decided to rent out all three rooms, the living room being used as a third bedroom. I instructed Up My Street Estate Agents, a local firm at 107-109 Hampstead Road, to arrange the lettings. I understood that any letting would comply with all statutory requirements.

10. In 2020, I arranged for Oakford Estates Limited to let the flat. My contact there was Shafi Miah. Oakford Estates are another local firm of estate agents who are based at 42 Hampstead Road, NWl 2PY. I paid them a 5% letting fee of £1,513.40. I understand that they advertised the flat on Right Move and Zoopla at a rent of £635pw inclusive of heating. I relied on them to advise me of the relevant statutory requirements. I was unaware that any licence was required."

"18. I now recognise that an HMO licence was required. I am not a professional landlord. I relied on a competent firm of estate agents to arrange for the letting. I assumed that they would advise me of any statutory requirements in respect of the letting. I ask the tribunal to consider whether I have a reasonable excuse for letting the flat without an HMO licence. Should the tribunal decide that I have not established a defence of reasonable excuse, I ask the Tribunal to take this into account in considering the size of any RRO. My fault was my failure to take sufficient steps to inform myself of the regulatory requirements."

22. The official copy of the land register shows the Respondent became registered proprietor of the premises in December 2005 under a right to buy scheme available to secure tenants under part V of the Housing Act 1985. This accords with the Respondent's evidence that he and his family (his wife and at the time his son Sunny) initially lived in the premises as their home but purchased a property at 81 Charlock Road Watford in 2007 as indicated in paragraph 7 of his witness statement R[4].

23. In his oral evidence in response to questions from Mr Neilson and the Tribunal it emerged that the agents used by the Respondent were part of his wider local community in the area which he had retained contact with over many years. There was an element of taking their services on trust and seeking to help younger members of that community as he had worked with younger members of the local community in the area where he had formerly lived and where he had worked for many years. In his words he had grown up in the area and assumed that the agents he used would notify him of all legal requirements. Confirmation of his participation in the local community is found in the Applicants' supplemental bundle page 23 which recorded the various community organisations he had taken an active role in.

24. He also said that he had believed that "Air bnb" occupation was subject to the requirements of an HMO licence but not the kind of letting he was engaged in.

25. The Tribunal accepts the genuineness of the Respondent's faith in the agents. Mr Neilson did not seek to challenge the Respondent's bona fides on this issue. However the invoice from Oakford Estates for their services including arranging the letting and preparing tenancy agreements dated 21 09 2020 at page R[35] did not provide any objective or other support for the Respondent's belief that they were engaged to provide advice about the need for an HMO licence or that they undertook responsibility for compliance with any statutory requirements. There was no other evidence to provide support for his belief.

26. The Tribunal bears in mind the view expressed in *Aytan v Moore* [2022] UKUT 027 *and Hallett v Parker* [2022] UKUT 125 that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. There is nothing in the evidence produced by the Respondent which would give a reasonable landlord any confidence that he was safe to rely upon the absence of any information from Oakford Estates (or their predecessors Up My Street Estate Agents) to reassure him that he had complied with any licensing requirements. The Respondent was unable to point to any written or other communications with those agents which would provide him with that assurance.

27. The Tribunal concludes that the defence of reasonable excuse has not been established by the Respondent on the balance of probabilities. The Tribunal is satisfied so that it is sure that Respondent committed the offence of being in control of the premises for the period set out below when an HMO licence was required without such a licence being in place.

The periods of time when the offence was committed

28. The Tribunal considered this issue initially to see if the offence was committed in the 12 months ending on which the application for an RRO was made within section 41(2)(b) of the 2016 Act. The application was received by the Tribunal on 02 February 2022. The tenancy of the Applicants was for the period from 21st September 2020 until 20th August 2021: see the agreement at A[36] to A[45]. The offence was committed during that period although occupation of the First Applicant did not commence until 24 09 2020: see her statement at A[101]. The offence was committed from 21 09 2020 as the premises were required to be licensed for the entirety of the period of the tenancy.

Discretion to make an RRO

29. It is clear that in most cases where a relevant housing offence has been found to have been committed by a landlord an RRO will be made. There is very limited scope for exercise of discretion not to make an order: *LB Newham v Harris* [2017] UKUT 0264 under the parallel provisions of section 97 of HA 2004.

The amount of the RRO

30. This was a key issue at the hearing between the parties. The overall approach is set out in section 44 of the 2016 Act which specifies the factors that a Tribunal must take into account in making an RRO. All parties

referred to guidance given in *Acheampong v Roman* [2022] UKUT 239 which requires the Tribunal to take the following steps:

(i) ascertain the whole of the rent for the relevant period;

(ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;

(iii) consider how serious the offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence?

(iv) finally, consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4) of the 2016 Act, namely.:

(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 identified in the table at section 45 of the 2016 Act.

31. The Respondent also sought to argue that he was not a "rogue landlord" against whom a RRO should be made at the higher end of the scale, but a landlord whose failure was to take sufficient steps to inform themselves of the regulatory requirements.

32. The total rent paid was agreed at £30,268.00.

33. **Utilities** – the only utilities provided by the Respondent were the supply of gas for heating and for cooking on cooker hob. Unusually the Respondent did not have to pay for heating separately as it was provided by a district heating system supplied by Camden and charged as part of his service charge. The amount charged by Camden to the Respondent did not vary according to usage. Despite questions from the Tribunal the Respondent did not produce any other evidence of electricity or gas costs relating to the occupation by the Applicants. After some discussion with the parties it appeared to be agreed that an estimated value of £750.00 per annum could be attributed to gas and heating supplied to the Applicants. Apportioning this for the 11 month period of the tenancy produces a potential utilities deduction of £687.50.

34. In his statement of 12 07 2022 (paragraph 19) the Respondent asked for a number of items to be taken into account in calculating the RRO. The

Tribunal considers these in turn.

a. Letting fee of 5% plus VAT; This is not deductible in calculating the RRO as it is expenditure which benefits the Respondent as landlord: see *Vadamalayan v Stewart* [2020] UKUT 183 as explained in in *Acheampong v Roman*.
b. Service charge payable to Camden of £2509.54. This is not deductible for the same reason.
c. Major works service charge – this is not deductible for the same reason. It improves the capital value of the Respondent's lease
d. Works to radiators, light, shower pressure pump "remedials" and replacement - these are not deductible for similar reasons; arguably these works would have been required to be carried out at the Respondent's cost under the tenancy agreement;
e. New sink taps plumbing and replacement of electrical consumer unit - these are not deductible for similar reasons.

Seriousness of the offence

35. The Respondent reminded the Tribunal that some Upper Tribunal decisions indicated that that licensing offences are less serious than the other offences specified in the 2016 Act as no term of imprisonment can be imposed for the offences – see the skeleton argument of 14 06 2023.

36. The Applicants argued (in the statement of 27 07 2022 and elsewhere) that there were a number of aggravating factors including the following:

a. The Respondent was an experienced legal professional "well versed in legal precedent";
b. The Respondent wrongly denied that he is a professional landlord and misrepresented the facts in his initial witness statement relating to reliance upon agents;
c. The Respondent failed to protect or arrange statutory protection of the deposit paid by the Applicants and delayed in returning the deposit until after solicitors were instructed;
d. There was disrepair/defect to a window which prevented adequate ventilation during the period of the Covid 19 pandemic;
e. The Respondent has not been frank about his financial circumstances and had been "lying" in his witness statement;
f. The Respondent delayed in applying for an HMO licence after being told such a licence was required and operated an unlicensed HMO for a period of time;
g. Failing to comply with the Gas Safety Regulations, the Electrical Safety Regulations and/or the Energy Performance Regulations;
h. Fire safety issues

37. The Applicants' allegations that the Respondent was a legal professional, or "well versed in legal precedent" were quite correctly not pursued by Mr Neilson or the Applicants at the hearing. It became clear that the Respondent had taken the position of director of Camden Community Law

Centre for some 6-7 months in 2010 as part of his contribution to the local community: see Applicants' second bundle page [23]. There was no evidence the Respondent had any legal qualifications or legal experience. The Respondent's witness statement of 12 07 2022 had clearly been prepared with some legal assistance but that by itself should not have formed the basis for an allegation that he was an "experienced legal professional": page [4] of Applicants' second bundle paragraph 23.

38. The Applicants ultimately did not challenge the Respondent's evidence that he left school at 16 without any formal academic qualifications and he worked his way up from waiter to "partner" at Diwana the restaurant in the Euston area where he worked. (In his first statement he described himself as a director). Nor did the Applicants at the hearing challenge the Respondent's evidence that the company of which he was director running the Restaurant was forced to surrender the Lease in 2020 and is now in an (insolvent) liquidation. The documents supplied by the Respondent concerning this were not complete or self-explanatory but were consistent with a business collapse of the kind which the Respondent discussed in his evidence. These documents and this evidence is consistent with the Tribunal's view that the Respondent is not (and was not) a sophisticated or a particularly experienced landlord.

39. Another indication that the Respondent was not a sophisticated or experienced landlord is his level of indebtedness to Camden. This is illustrated by the letter from Camden's solicitors dated 22nd October 2021 at R[36] which refers to an earlier County Court judgment and a notice before forfeiture for a relatively modest sum of £2509.54 copied to the mortgagees of the premises. A sophisticated or professional landlord would not have allowed that situation to arise.

40. The Applicants did not contend that the Respondent's son Sunny who assisted the Respondent with day to day management of the premises was a sophisticated or experienced landlord. There was no evidence to support such a conclusion. Sunny's evidence at the hearing was that sometimes he was not available to assist with management as he was out of the country for his work.

41. The Applicants' allegation that the Respondent misrepresented the position in relation to his reliance upon Oakfield Estates in paragraphs 8- 9 of their statement of 27 07 2022 is not made out insofar as it alleged deliberate misrepresentation or bad faith. It is unfortunate that such a serious allegation was made. The Tribunal finds that the Respondent was if anything naïve or too trusting in his assumption that the agents would advise him of statutory requirements. The absence of "outraged .....correspondence" with the agents is capable of a number of other explanations. The Tribunal does not need to make findings about the precise details of the relationship between the agents and the Respondent but notes that at the time of the hearing, he continued to work regularly in the area at the restaurant he referred to and had re-let the premises to other tenants with the assistance of agents. He had a long history of community work and association in the area where the agents operated and they were part of his wider community.

The failure to protect the deposit

42. In relation to the failure to protect the deposit, the Respondent accepted that he had failed to comply with the statutory requirements in his statement of 12 07 2022. He said that he thought he had done so. At the hearing he said that with his previous agents Up My Street they had dealt with this issue. On this issue the invoice from Oakford Estates actually mentioned "security deposit". The invoice at page [35] is consistent with that deposit being passed to the Respondent. The invoice bears a number of potentially reassuring "icons" including membership of the Property Ombudsman Scheme and "Safe Agent" an accreditation scheme. To a landlord inexperienced in legal or regulatory matters the Tribunal can see how the Respondent might have assumed, quite wrongly, that all was in order, particularly if he had contact with some of the individuals at that company before the business relationship commenced. His evidence that he had reached an agreement to compromise the Applicants' claim for the failure to secure the deposit (made in the first numbered paragraph 17 of the witness statement of 12 07 2022) was not challenged at the hearing but it was suggested in the witness statement of 27 07 2022 (paragraph 7) that agreement had not been reached. This was accompanied by an allegation that the Respondent had not been "truthful" in his witness statement. The allegation of lying was not pursued at the hearing. It was common ground that the deposit itself had been returned to the Applicants.

43. The Applicants' case concerning the harm caused by this issue is indicated by the delay in returning the deposit to them until 28 09 2021 and the deduction of £250.00 for the crack on the window in the First Applicant's room the premises referred to in detail at pages [A103-A107].

Disrepair to window in the First Applicant's room at the premises

44. The Applicants' case is that they contacted Sunny on multiple occasions to complain the window did not stay open during the heatwave and they were unable to keep it open when one of them tested positive for Covid 19. This is confirmed in print out of texts at their second bundle at A[20-21]. It appeared from photograph in the bundle that one of the sash window cords may have been broken. They also said they raised this with Sunny at the outset. He agreed that he would try to find something to keep the window open but accepted he failed to do so, partly as he was so busy and out of the country from time to time.

45. The Tribunal does not accept that this window to this room was a "common part" to which regulation 7(6) of the Management of Houses in Multiple Occupation (England) Regulations 2006 ("the 2006 Regulations") applied.

46. Clearly this was a significant issue for the Applicants and a failure of management by the Respondent. By itself or in combination with other factors, (whether or not it amounted to a breach of the 2006 Regulations), it does not take this offence into the more serious category of licensing offences.

47. The Tribunal addresses the Respondent's financial circumstances separately below.

Operating an unlicensed HMO

48. The Applicants invite the Tribunal to draw an adverse inference from Sunny's email of 10 02 2022 at R[33] asking a firm to advise about HMO requirements saying that he had just found out about the need for this. The inference which the Applicants seek to draw is that this email was sent to mislead the Tribunal – paragraph 12 of the Applicants' statement of 27 07 2022. Having seen and heard the Respondent and Sunny, the Tribunal is unable to draw that inference. The Tribunal has not seen any evidence which might support such a serious allegation.

49. It is correct to note that Sunny's email of 10 02 2022 was at variance with a text he sent in response to the First Applicant's text dated 23rd August 2021 at A [20-21] which requested a copy of the HMO Licence. Sunny's text (which is not dated on the copy in the bundle at A[22]) said "Furthermore your request for a HMO licence after you left the flat is irrelevant, you was that concerned you should have asked to begin with and I would have shown you". The Tribunal looks at that text as a clumsy and defensive response given in the context of disagreement about return of deposit and whether a crack on the window was the responsibility of the Applicants or not.

50. Mr Neilson did not pursue the allegation that Sunny and/or the Respondent knew that an HMO licence was required but deliberately decided not to obtain such a licence which is what paragraph 12 of the Applicants' statement of 27 07 2022 alleges.

51. In his statement of 14th June 2023, the Respondent says that he applied for an HMO licence on 17 April 2022 and referred to the email at R[34]. He said he could not provide a copy of the application as he had made it "on line". Camden acknowledgment of the receipt of the application and payment of £1,300 are at R[35]. The Respondent produced a copy of a letter from Camden saying they had not yet determined the application dated 16 January 2023 (at pp 5-8 of the Respondent's second bundle). The Tribunal acknowledges that the full details of this application and the reasons for the delay have not been given. However if the Applicants intended to allege that the Respondent made a subsequent letting without an HMO licence being in place or being applied for, that serious allegation was not proved, on the evidence before the Tribunal.

Failure to comply with the Gas Safety and Electrical Safety and Energy Performance regulations

52. The Applicants made these allegations in paragraphs 53 -55 of their witness statement dated 9th June 2022 at [11]. The Respondent responded in paragraph 11 of his statement of 12 07 2022 as follows (with re-arrangement of footnotes):

> " I ..... arranged for an Energy Performance Certificate R[.19], [1

The date of the assessment was 18 September 2020 - see R[.22] and EICR R.[23] and a gas safety certificate R[29] [dated 17 September 2020]. I assumed that Oakford Estates Limited provided copies to the tenants, together with the "How to Rent" booklet.

Footnote This EICR is dated 16 August 2021 and relates to the subsequent tenancy. I have been unable to find the certificate for August 2020. I know that I did arrange for a certificate. I am still looking for this."

53. The allegation of that the Respondent failed to provide the certificates to the Applicants was not contested. The Tribunal has seen copies of the certificates in force for Energy Performance and Gas Safety for the relevant period. It is more likely than not that such an electrical installation certificate for 2020-2021 period existed but has not been made available. The failure to retain a copy of the earlier report is a separate breach of the Electrical Safety Standards in the Private Sector (England) Regulations 2020. The 2021 report at R[24] indicates a further inspection in 3 years' time was recommended and only one item of recommended further action at R[24]. The allegation that the electrical installation report did not comply with regulation 6 of the 2006 Regulations was not pursued.

Fire safety

54. The Applicants contended there were significant fire safety failings within the premises, namely: a. There were no fire doors in the kitchen nor bedrooms of the subject property (A.102-103 para 5), (OPEB p.6 para 13). b. There was no fire extinguisher in the subject property until requested by the Applicants. This appears to have been provided in October 2020: see text messages A[103]. The more significant failure here was the absence of a fire safety door to the kitchen as the kitchen was located next to the main exit door. , Whether or not fire doors to bedrooms would have been required in a licensed HMO of this type and size was not clear to the Tribunal in the context of an absence of evidence that bedroom fire doors were a requirement of the licensing authority.

Seriousness of offence - Summary

55. The Tribunal is also required to consider how serious this particular offence of managing or being in control of an unlicensed HMO is when compared to other examples of the same offence: *Daff v Gyalui & Anor* [2023] [2023] UKUT 134. In this context the Tribunal finds that despite the various concerns of the Applicants the condition of the premises was reasonable. Within this category of offence, the offending lies in the less serious quartile having regard to the level of harm damage and injury suffered. That is not to minimise the problems and concerns felt by the Applicants particularly in the context of the Covid 19 Pandemic.

Conduct of tenant

56. No allegations that conduct of the Applicants were relevant to the amount of the RRO were pursued against the Applicants.

Conduct of the Respondent landlord

57. Mr Neilson very properly reminded the Tribunal that the allegations of conduct made under the heading of the seriousness of the offence should not be counted again under this head of assessment.

The Financial circumstances of the Respondent landlord

58. The Respondent and Sunny gave details of his financial circumstances to supplement those given in paragraph 9 in his statement of 15th June 2023 where he stated as follows:

> "9. I continue to work at Diwani as a waiter. As stated in my original statement, I returned to work as I needed the discipline or work and some routine to my life. This was the restaurant which I used to own. I work there 104 hours a month. My hourly rate was £9.50ph (£988 pm). In April the hourly rate was increased to £10.42ph (£1,084 pm). This is the government's national minimum wage. The London living wage is currently £11.95ph. I continue to be in receipt of universal credit. A significant source of income is the rental income which I derive from my flat at Aberdeen Mansions. My current tenants have been in occupation since August 2021. They have recently asked to extend their tenancy. I will be happy to provide fuller details of my means at the hearing."

59. The Respondent said at the hearing that he continues to receive universal credit of £456.00 per month, wages of £1050 per month (net of tax and national insurance). Sunny was able to contribute £500 per month toward living expenses. There is a young son aged 15 who is in full time education residing in Watford.

60. The mortgage repayments upon the premises were nearly £930.00 per month at a fixed rate of 2.35% p.a due to expire at June 2024: this is confirmed at R[7-8]. Service charges payable to Camden were estimated at £383.00 per month. In addition it was said that £250.00 per month was payable for another two months towards service charges for major works referred to at R[38-39]. Commission to the agent was said to be payable at the rate of £146.00 per month. In addition the deposit was being repaid to the applicants at the rate of £500 per month for another six months. The net rental income from the premises was said to be £690.00 per month after expenses set out above (gross income £2,900 per month)

61. The Respondent said his total monthly income was therefore £2697.00 including universal credit and his total expenses were £3163.00 calculated as follows:

	£ per month
Mortgage repayments including Charlock Way	1172.00
Life assurance	120.00

Electricity / gas	450
Council tax	190
Water bill	100
Broadband and phone	26.00
Sky TV	25.00
Petrol	260.00
Mobile phone	40.00
Road tax	20.00
Car insurance	60.00
Congestion charge	20.00
Gym membership	50.00
Son's school lunches	80.00
Shopping	300.00
Groceries	250.00

62. He said that the outstanding mortgage loan on the premises was £478,000 on the premises and £170,000 on the Watford house. This appears to have been an interest only loan: see r[7-8]. He estimated the value of the premises at £600,000 based upon valuation of similar premises obtained by a neighbour. He estimated the value of the Watford property at £400,000 -450,000. The Applicants produced a print out from Zoopla giving a valuation of this property at £479,000: see Applicants' second bundle at [25]. The same bundle gave a "Zoopla" valuation of the premises at £715,000: see [24]. Both Zoopla valuations were median figures between high and low figures. The Respondent said that his only savings or investments were the life assurance policy.

63. In short, the Respondent painted a picture that his monthly expenses currently exceed income by about £500, but this will improve when the payments to service charge arrears and deposit penalty are cleared, leaving him in future with a small surplus. The Respondent's failure to provide documents confirming his financial position in compliance with the Tribunal's directions however means that the weight which could be attached to the description of his outgoings is very limited, and no details were provided from tax returns to clarify how much tax he is required to pay annually.

64. Other personal factors which the Respondent mentioned included his heart condition and the fact that he suffered bereavement of a close personal relative during Covid: see R[16].

65. The absence of the Respondent any criminal convictions, is of little direct relevance in this kind of case. It is simply a factor which would otherwise aggravate the seriousness of the offence.

Analysis of assessment factors – conclusions

66. Ultimately the Respondent is a small non-professional landlord with a single property, who the Tribunal finds was unaware of the need to apply for an HMO licence. The premises were in fairly good condition. That said, the scheme of RRO's is not compensatory but is designed to provide a deterrent and proper enforcement of licensing requirements against all

landlords, good and bad. The Respondent and his son failed to take sufficient steps to inform themselves of the regulatory requirements associated with letting an HMO. It appears this may not have been the first letting to a group when the HMO requirements would have been triggered. The Respondent has taken steps to regularise the position and apply for an HMO licence for the new letting. He did place some trust in agents who ostensibly were regulated and this should be taken into account in his favour.

67. The Respondent's weak financial position is of limited weight as it is partly associated with his personal and family arrangements and circumstances. By way of example the Applicants contended that his debt burden could be mitigated by sale of the premises. In view of the uncertainty about his financial position no specific deduction is appropriate on this account, but such information as was presented indicated the Respondent generally to have a number of financial challenges and worries and did not fit a "wealthy landlord" description.

68. The Applicants and Respondent referred to Upper Tribunal decisions such as *Hallet v Parker* [2022) UKUT 165 and *Simpson House 3 Ltd v Osserman* [2022) UKUT to support their respective contentions about the proportion of rent which should be awarded and in accordance with the approach in *Acheampong*. Ultimately these are examples of the starting point. The Tribunal's task is an evaluative one by way of comparison with other offences of a similar kind within the bracket for licensing offences under section 72 of the HA2004. The Tribunal finds that the appropriate proportion of award should be 40% of the rent paid with no deduction for utilities such as gas which were payable by the Respondent to Camden irrespective of usage. As all Applicants contributed jointly the order will be made in favour of all 3 jointly.

Reimbursement of fees

69. The Tribunal considers it just and equitable to order the Respondent to reimburse the Applicants for the application fee and the hearing fee. No offer of settlement appears to have been made and it was necessary for the Applicants to give evidence and incur the hearing and application fees.

H Lederman
Tribunal Judge
20th July 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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 identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix relevant legislation

Section 72(1) of the 2004 Act provides that a person who has control of or manages an HMO required to be licensed under section 61 of the 2004 Act commits an offence if it is not so licensed. Section 72(5) of the 2004 Act provides that "In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that [the person accused] had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
(b) for permitting the person to occupy the house, or
(c) for failing to comply with the condition,

as the case may be." (Tribunal's insertions)

Section 61(1) of the 2004 Act provides that "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."

The relevant part of the 2004 Act is Part 2. Section 55 of the 2004 Act is entitled "Licensing of HMOs to which this Part applies". Sections 55(1) and 55(2) of the 2004 Act (in their relevant parts) provide:

"(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)....."

1. Section 62(1) provides: "This section applies where 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, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed."

2. Sections 62(6) and 62(7) of the 2004 Act provide:

> "62(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of—
>
> (a)the decision,
> (b)the reasons for it and the date on which it was made,
> (c)the right to appeal against the decision under subsection (7), and
> (d)the period within which an appeal may be made under that subsection.
>
> (7)The person concerned may appeal to [the FTT] against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made."

3. Section 72(4) of the 2004 Act provides: "In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time— a notification had been duly given in respect of the house under section 62(1),..... and that notification ..... was still effective (see subsection (8))."

4. Section 72(8) of the 2004 Act provides "For the purposes of subsection (4) a notification ..... is "effective" at a particular time if at that time it has not been withdrawn, and either—

> (a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or....."

Section 254(2) of the 2004 Act. This sets out what constitutes an HMO, falling within the "standard test":

> "A building or part of a building meets the standard test if
>
> (a) it consists of one or more units of living accommodation not consisting of self-contained flats;
> (b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by the tenants as their only or main residence;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable in respect of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet. “