FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/33UG/HMK/2025/0601**
Property	:	**199 Sentinel House, Surrey Street, Norwich NR1 3SZ**
Applicants	:	**1. Ekow Ampah** **2. Nana Kwabena Agyapong Adjei** **3. Valentino Nduro Boateng** **4. Tuahir Ouro-Bodi** **5. Enoch Owusu-Afriyie**
Respondents	:	**1. Lomond Property Lettings Limited (t/a Lomond Investment Management)** **2. BCR Investments Ltd**
Appearances	:	**The Applicants** **Ms Z. Khan (First Respondent)** **Mr W. Mapstone (Second Respondent)**
Type of application	:	**Application by tenants for rent repayment order – Section 41 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge M. Hunt** **Mr G. Smith MRICS**
Date of hearing	:	**5 August 2025 (remote hearing)**
Date of decision	:	**11 August 2025**

DECISION

1. The application for a rent repayment order succeeds against the Second Respondent, BCR Investments Ltd.

2. BCR Investments Ltd, must repay to each Applicant the sum of £4,961 (a total of £24,805) within 28 days of the date of this decision.

3. In addition, BCR Investments Ltd must pay to **each** Applicant the sum of £110 in reimbursement of Tribunal application fees paid, within 28 days of the date of this decision. It must also reimburse the Applicants the £227 hearing fee paid. The Applicants are to notify BCR Investments Ltd to whom this sum should be reimbursed, and, if applicable, in what proportions.

4. The application for a rent repayment order against the First Respondent, Lomond Property Lettings Limited trading as Lomond Investment Management, is dismissed.

REASONS

Introduction

1. The Applicants leased flat 199 Sentinel House, Surrey Street, Norwich, Norfolk, NR1 3SZ (the "Property") from the Second Respondent ("BCR") pursuant to an assured shorthold tenancy from 9 September 2022 until they vacated the flat on 6 June 2024.
2. On 11 July 2024, the Applicants applied to this Tribunal for a rent repayment order in accordance with section 41 of the Housing and Planning Act 2016. They assert that their landlord had committed an offence by failing to license the Property as a house in multiple occupation ("HMO").
3. The Applicants seek an order requiring the Respondents to repay rent totalling £27,700 that was paid from 10 August 2023 up until they vacated the Property.
4. In reaching its decision, the Tribunal considered 3 sets of documents, one provided by each party. It also considered an email forwarded to the Tribunal during the hearing. It heard from all of the parties. The Tribunal was grateful to all for their preparation of the papers, their helpful submissions and their assistance at the hearing.
5. The Tribunal will outline the relevant facts, law, issues and then its conclusions explaining why it arrived at its decision.

Facts

6. All of the findings of fact below are made on the balance of probabilities in light of the evidence that was available to the Tribunal, save in relation to whether an offence was committed, which is a finding made beyond reasonable doubt. In reality, few facts were in dispute.

7. BCR is the leaseholder of the Property (and of around 38 other flats in Sentinel House). The Property is the only one of BCR's properties of a size that would readily allow it to be let as a HMO. At some point prior to September 2022, BCR engaged Abbot Fox Limited ("Abbot Fox") as its agent to manage all its properties.
8. Abbot Fox's "Confirmation of Instruction" includes the terms of the parties' agreement. It's first line reads: "*I/We have read the Terms of Business overleaf. I/We understand and accept those Terms of Business and give authority for abbotFox to proceed with the marketing of the below property*". Clause 1a of the "Terms of Business" states that Abbot Fox "*will ask you for written confirmation of your instructions to proceed with a letting. Upon receipt of such confirmation, we will sign the tenancy agreement and exchange contracts on your behalf once you have given permission to proceed*". Clause 1b provides that confirmation can be oral. Clause 1c provides that Abbot Fox are appointed as BCR's "*sole agent*", with "*exclusive right to let your property*".
9. Clause 3 reiterates that BCR must, at all times, give Abbot Fox "*the necessary authority to proceed with any prospective tenant*". Clauses 4-7 deal with various regulatory regimes. They state that BCR will remain liable for compliance with gas and electrical safety regulations, albeit that Abbot Fox "*reserve the right*" to appoint its own engineers to ensure compliance if BCR defaults (at the latter's cost). Clause 6 states that compliance with furniture safety regulations is entirely BCR's responsibility, who warrants it has complied, and will continue to comply as time goes by. Clause 8 states that BCR will indemnify Abbot Fox against any liability related to BCR's failures under the preceding clauses.
10. Clause 11 states that rent received and due to BCR will be paid over by the agent. The remaining clauses deal with other aspects of tenancy or property management and the parties' relationship, none of which are relevant for present purposes. There is no mention at any point of HMOs or their licensing, or that Abbot Fox will provide general advice to BCR about its responsibilities whether in general, or specifically in relation to HMO licensing.
11. On 9 September 2022, an employee of Abbot Fox signed an assured shorthold tenancy agreement between "*BCR Investments Ltd*" as "*Landlord*" and the Applicants as "*Tenant*". Clause 1.2 states that Abbot Fox is the "*Landlord's Agent*". Clause 1.3 states that the "*Landlord lets and the Tenant takes the Property for the Term at the Rent payable*". Clause 1.5.2 reads as follows.

    "*The Property is let as a House in Multiple Occupation within the meaning of the Housing Act 2004. The Property does require the Landlord to hold a licence to be able to let it lawfully. The Tenant agrees not to use the Property in any way that changes either of these facts*".

12. The rent was £2,500 per calendar month. A deposit of £2,884 was due and was paid.

13. On 28 February 2023, a further assured shorthold tenancy agreement was signed for a term of one year from 9 September 2023, at an increased rent of £2,800 per calendar month. The deposit remained the same and was stated as having been paid. The agreement contained the same information and clauses as referenced above. It was signed by "William Mapstone" for the Landlord (who is a director of BCR). The rent increase had been the subject of email correspondence between BCR and Abbot Fox on 27 February 2023. Abbot Fox advised in relation to the increased rent of £2,800 per month "*to get this locked down asap!*". BCR replied: "*Ok sure let's lock that in then if you think that's the best we can get*".
14. BCR did not at any point apply for (less still "hold") an HMO licence for the Property. BCR says that it did not know it needed to until later and that Abbot Fox never raised this issue with it. The Tribunal did not hear from Abbot Fox nor did it have any copies of potentially relevant correspondence between BCR and Abbot Fox on this point. For reasons that will become clear, the issue is unimportant to the Tribunal's ultimate decision so it will make no findings about it, save that it accepts that BCR did not know it required the licence until June 2023.
15. There were no issues of note until June 2023 when BCR decided to engage an alternative agent, the First Respondent ("Lomond"). Lomond has confirmed that it took over management of the Property from 22 June 2023.
16. The agreement between the parties confirmed that Lomond was being appointed as "*Agent*". The terms of business were far lengthier than those agreed with Abbot Fox, but did nothing to change the fundamental nature of the relationship as one of landlord and landlord's agent. Section 19 of the agreement is entitled, in bold and capitalised font, "**19. MANDATORY HMO LICENSING**". It is as follows.

    "*19.1 A Property will require a HMO licence if the Property is let to a group of five or more individuals forming more than one Household.*

    19.2 If the Property is a HMO it is the Landlord's responsibility to obtain the licence and provide a copy of the licence to the Agent.

    …

    19.4 The Agent should check that the Landlord has a licence, or has at least applied for one, unless the Agent is to be the licence holder. In this instance, the licence will be held in the company name of the Agent. Otherwise, as "Person having control" the Agent commits the offence of operating an unlicensed Property and could face a fine of up to £30,000.

    19.5 In the event a Landlord has said a licence is in place and it is subsequently found that it is not, the Agent under the Terms & Conditions of this relationship, is given the irrevocable right to obtain a licence on their behalf. The process to obtain a licence will commence within seven Days before the commencement of a new Tenancy and will be entirely at the Landlord's cost…

19.6 The Landlord is responsible in ensuring that HMO Licensing Legislation is complied with. However, where a Managing Agent is instructed by the Landlord and is collecting Rent on their behalf, the Agent must ensure that the legislation is observed.

...

19.8 If a Property is not licensed when it should be, it is a criminal offence and the "Person having control" and the "Person Managing" can both be prosecuted".

17. Lomond rapidly identified that the Property required an HMO licence and raised that with BCR at some point prior to 13:21 on 29 June 2023. In an email sent at that time, Lomond had written "***199 Sentinel House*** *– This is the property with the unlicenced HMO. Our team are starting the process of reviewing the documentation required to submit an application on your behalf*".
18. Lomond submitted that this was a complex and lengthy process, involving much discussion with various people. Upon the Applicants and Tribunal seeking clarification at the hearing, little detail was provided. Lomond made generic comments that it needed time to establish the facts, research the matter and discuss the matter with the freeholder of Sentinel House.
19. The documents presented to the Tribunal showed that both Respondents were fully aware of the requirement to obtain an HMO licence by late June 2023. However, they show that no exchanges or tangible progress was made on the matter by 18 January 2024, when Lomond wrote to BCR to inform it that as "*there are 5 tenants in the above address we are required to apply for a HMO licence...*". The email references the cost as listed on Norwich City Council's website and indicates the administration fee that Lomond would charge in addition were it to process the application on BCR's behalf. Later that day, Lomond wrote: "*There are sometimes conditions that are required as part of the licence that apply to fire safety (for example) within the flat itself. The council website has a standard list of possible conditions...*".
20. On 26 January 2024, Lomond wrote to the Property freeholder's managing agent ("PM Norfolk") informing it of the mooted HMO application and seeking information about the Property, notably the type of smoke detectors in place, the existence of appropriate fire doors and other fire safety features.
21. By 15 February 2024, PM Norfolk had researched the issue, advising Lomond of a significant insurance uplift that would have to be borne by BCR, the structural improvements related to fire safety that would be required, the detail of additional inspections that would be undertaken (all with indicative costings), together with information about other administrative steps that would need to be taken in order to convert the Property into a compliant HMO. A difficulty remained that any such

conversion would amount to a breach of covenant in the "head" lease between the freeholder and BCR.

22. On 7 March 2024, Lomond wrote to BCR to say "*we are in receipt of relevant information so we can discuss the options regarding [the Property]*". Lomond confirmed that an HMO licence would be required. Lomond gave some options as to how to proceed. Firstly, it proposed to seek evidence from Abbot Fox that the Applicants formed a single household. Secondly, it proposed to seek the same evidence from the Applicants, followed by the caveat "*(I would say we want to avoid any panic with the tenants so that there is no opportunity to exploit the situation for their financial gain)*". Thirdly, it proposed to ask one tenant to depart so that the number of occupants fell below the threshold for the Property to be considered a licensable HMO. Finally, it proposed to "*Serve notice on all 5 tenants*". Lomond recognised there would be a financial loss were the Property no longer let as an HMO.
23. In light of this chronology, the tenor and content of the correspondence from January – March 2024, the Tribunal concluded, contrary to Lomond's submission, that neither BCR nor Lomond had taken any significant steps to consider the HMO licencing failure until January 2024. The 18 January email from Lomond to BCR simply reiterated what had already been established in June 2023, that an HMO licence was required. The very generic information provided to BCR shows that Lomond had done very little research into the issue in the meantime. BCR clearly had not either, nor had it pushed for any action. The 26 January email from Lomond to PM Norfolk raised very basic initial queries, again demonstrating prior inaction.
24. In March 2024, BCR made the decision to seek to terminate the tenancy and instructed Lomond accordingly. Lomond served a "section 21 notice" (in Form 6A) on the Applicants on 22 March 2024, requiring possession by 27 May 2024. BCR said that it did not specifically request Lomond to serve this form of notice, which was signed by Lomond. The Tribunal found BCR had only asked Lomond to "*serve notice*" in line with the advice received on 7 March 2024, without further instruction.
25. The Applicants immediately responded to express their shock and confusion, highlighting that they were university students who had paid rent on time and kept the property in good condition. They asked why the tenancy was being terminated to see if an alternative resolution could be reached.
26. Shortly afterwards, in either late March or early April 2024, the Applicants asked to stay beyond 27 May 2024, until 30 June 2024, due to university commitments (which included taking exams). Ultimately, the Applicants agreed to vacate on 6 June 2024. They had been given no explanation for the termination of the tenancy or offered any assistance in finding alternative accommodation. The Tribunal found that this was, at least in part, due to BCR pursuing the approach advised by Lomond to limit the Applicants' awareness so that they could not "*exploit the situation for their financial gain*". BCR's priority at all times had been to maximise revenue, as

demonstrated by the words employed during the rent review "*if that's the best [rent] we can get*".

27. The Applicants vacated the Property during their exams, which caused substantial difficulties for at least some of the Applicants, especially those who had no alternative accommodation.
28. At the hearing, all parties accepted that they had agreed that the final month's rent would be taken from the Applicants' deposit.
29. On 10 June 2024, the Property was inspected. Some items of damage were highlighted, which the Tribunal considered to be "normal wear and tear". Some additional invoices related to disposal of items. The Applicants stated that these related to items that had been there when they started the tenancy, including a heavily stained sofa. The Respondents proffered no contrary evidence. The Tribunal accepted the Applicants' evidence. In relation to cleaning, the Applicants stated that they had left the Property in a good and clean state. The inspection report said "*not clean*". The photos were not entirely clear, but showed no significant issues. The Tribunal found that the Property had been left in a reasonable condition.
30. The Respondents provided no information about their financial resources.

Relevant Law

31. Section 61 of the Housing Act 2004 requires that relevant HMOs are to be licensed by the local housing authority, in this case Norwich City Council. There was no dispute that the Property was an HMO that required a licence at all relevant times.
32. Any licence that is granted, is subject to conditions. As far as relevant to this case, Norwich City Council's licensing conditions concern principally electrical and fire safety.
33. Section 62 of the Housing Act 2004 provides that an HMO can be temporarily exempted from the licensing requirement. This occurs when the local housing authority serves a "temporary exemption notice". The temporary exemption lasts for 3 months. A further temporary exemption can be sought, but only once and only in exceptional circumstances.
34. Section 72 of the Housing Act 2004 is as follows, so far as is relevant.

"***72 Offences in relation to licensing of HMOs***

(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.

...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1)".

35. Section 263 of the Housing Act 2004 provides a definition of "person having control" and "person managing". It was not in dispute that both Respondents could fall within the relevant definitions. BCR satisfied at least the definition of "person managing", as registered leaseholder of the Property who received rent from the Applicants (via Lomond). Lomond satisfied at least the definition of "person having control", as it received the rack-rent of the Property (albeit as agent).
36. Section 75 of the Housing Act 2004 provides that:

"*(1) No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO*".

37. A "section 21 notice" refers to a written notice given by a landlord in accordance with section 21 of the Housing Act 1988 notifying the tenants that it requires possession of the property. The notice must be given in a specific form (6A) set down in the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015.
38. Section 40 of the Housing and Planning Act 2016 provides that this Tribunal can make a "rent repayment order" – an order requiring a landlord to repay an amount of rent paid by a tenant – where the landlord has committed an offence under section 72(1) of the Housing Act 2004.
39. Section 43(1) of the Housing and Planning Act 2016 is as follows.

"***43 Making of rent repayment order***

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)".

40. Section 44 of the Housing and Planning Act 2016 provides that the amount of rent to be repaid must relate to a period, not exceeding 12 months, during which the landlord was committing the offence. Also, it must not exceed the rent that was paid in respect of that period, excluding any relevant award of benefit. Further, it provides as follows:

"*(4) In determining the amount* [of the rent repayment order] *the tribunal must, in particular, take into account–*

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

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies" [not applicable in this case].

41. Section 52(2) of the Housing and Planning Act 2016 states that:

"*(2) For the purposes of this Chapter* [Rent Repayment Orders] *an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent*".

42. For the purposes of these provisions of the Housing and Planning Act 2016, no definition of "landlord" is provided. However, the Supreme Court in the case of Rakusen v Jepsen and Others [2023] UKSC 9 has confirmed that the definition of landlord is straightforward – the landlord under the tenancy that generated the relevant rent.

43. Rule 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to order a party to reimburse another party for any Tribunal fees paid, whether on an application or of its own initiative.

Main Issues

44. The main issues for the Tribunal to determine were as follows.
    1. Which of the Respondents was to be considered the "landlord" for the purposes of any rent repayment order.
    2. Whether the Tribunal was satisfied beyond reasonable doubt that the relevant Respondent had committed an offence at all relevant times, including considering whether it had a reasonable excuse for not having licensed the Property.
    3. If so, whether the Tribunal should make a rent repayment order.
    4. If so, in what amount, taking account of the rent paid, the parties' conduct and the financial circumstances of the relevant Respondent.
    5. Whether the Tribunal should make any order in relation to the reimbursement of Tribunal fees paid by the Applicants.

Conclusions

Issue 1: who was the "landlord"?

45. The parties all appear to have been under the impression that an agent can be the subject of a rent repayment order. The Applicants had initially brought proceedings against Lomond only. They maintain that an order should be made against it. Both

Respondents have sought to have Abbot Fox joined to the proceedings, presumably so that any order can be made against it, either solely or alongside BCR and/or Lomond.

46. However, section 40 of the Housing and Planning Act 2016 is clear. A rent repayment order can only be made against a "landlord", which means the landlord under the relevant tenancy. That was clearly BCR, who was the leaseholder of the Property entitled to grant the tenancies. It was named as "Landlord" on both tenancy agreements and applied its own signature to the second. The agency agreements concluded with both Abbot Fox and Lomond were clearly only agency agreements, not leases. This is unaffected by any statement as to "exclusive letting rights", which simply meant that if any tenancy is agreed directly with a tenant or via another agent/third party, commission would still be due to the appointed sole agent. Both Abbot Fox and Lomond acted at all times as BCR's agent and in no other capacity.
47. This was not the reason for which Abbot Fox was not joined as party, however. The reason for that was that the period for which a rent repayment order was being sought did not relate to any period during which Abbot Fox was acting as agent. The only agent managing the Property during the relevant time, therefore capable of having committed an offence during that time, was Lomond.
48. In relation to the first issue, the Tribunal therefore concluded that the only Respondent who could be subject to a rent repayment order was BCR. Some confusion may arise because an agent can be found to have committed the offence of being a "person having control" of or "managing" an HMO without a licence, but the Tribunal is not directly investigating that matter. For the purposes of determining whether to make a rent repayment order, it is only considering whether the relevant "landlord" committed that offence.

Issue 2: was an offence committed?

49. BCR accepted that the Property was required to be licensed in accordance with section 61 of the Housing Act 2004 and that it was not licensed at the relevant times (or at all). This was clearly correct. Accordingly, the Tribunal was satisfied that the core elements of the offence under section 72 of the Housing Act 2004 were made out.
50. BCR submitted, however, that it should bear no, or little, blame for that. It submits that it followed its agents' advice at all times and was entitled to delegate all functions of property management to them, including compliance with housing law. In this case, it submits that Abbot Fox was clearly the person responsible for creating the HMO and for the licensing failure.
51. The Tribunal is required to consider whether BCR had a "reasonable excuse" for failing to licence the Property as an HMO. If it did, it would have committed no offence. The Tribunal noted that the period for which it had to consider whether a reasonable excuse existed was only from 9 August 2023 onwards.

52. This is because the Applicants had stated clearly in the application that they were only seeking repayment of rent paid from 10 August 2023. This was all referrable to the rental period commencing on 9 August 2023. Importantly, they had not sought repayment of rent for any earlier period. One of the issues highlighted by the Applicants in their statement of case was that Lomond "*continued to manage the tenancy despite knowing the property was unlicensed*". The same logic applies to BCR. Whether or not the Applicants concede that BCR had a "reasonable excuse" prior to then, they clearly believe that continuing to let the Property as an unlicensed HMO beyond 9 August 2023 amounted to an "inexcusable" offence and were seeking repayment of rent only from then onwards.
53. Both Respondents have placed much reliance on Abbot Fox's role, so the Tribunal considered what happened prior to 9 August 2023, as part of its consideration of any "reasonable excuse".
54. As far as it could establish from the evidence available to it, the Tribunal found that BCR had overstated the scope of Abbot Fox's responsibilities (and of an agent's responsibilities generally). Nothing in their agreement stated that Abbot Fox would advise upon, let alone take responsibility for, HMO licensing. The agreement was essentially to find tenants and handle the day-to-day management of the Property. Anything Abbot Fox did was subject to BCR's instructions. The agreement was clear that BCR retained significant responsibilities in relation to regulatory compliance, albeit that in certain specified areas (notably electrical and gas safety) Abbot Fox would be entitled to take action in case of BCR's default.
55. The Tribunal has already stated that it has very little information about relevant correspondence between BCR and Abbot Fox, including how the Property came about to be marketed as an HMO in the first place, so will make no further conclusions about their relationship and respective responsibilities.
56. In any event, on the face of both assured shorthold tenancy agreements entered into with the Applicants, it was clear that the Property was being let as an HMO and would require BCR to hold a license for it. Although BCR did not sign the first agreement itself, it did the second one in February 2023.
57. Although the Tribunal did not have a copy of the lease between the freeholder of Sentinel House and BCR, it had a copy of an email from Norfolk PM stating that operating the Property as a HMO would constitute a breach of covenant. This is an issue that would, or should, have been known to BCR and has very little to do with Abbot Fox.
58. BCR owns a large number of leasehold properties. A letting business can be a very profitable enterprise. However, it involves numerous obligations and responsibilities, which evolve over time. All landlords, especially professional landlords, are expected to know about and/or take active steps to inform themselves about, those obligations and responsibilities, including compliance with housing law and, where applicable, its own lease. The HMO licensing regime is generally well-known and publicised.

Many online resources provide information about it. Any uncertainty or queries would no doubt have been rapidly addressed by Norwich City Council had BCR wished to investigate further. With this in mind, the simple fact of appointing an agent to handle the management of certain aspects of a property, focussed on marketing it for let and dealing with tenants, will rarely exonerate a landlord of its responsibilities.

59. Furthermore, in light of a landlord's ability to control the use and mode of occupation of their properties, make all decisions about them and inform themselves of their responsibilities, the Tribunal will be slow to accept that any error or default of an agent or advisor relied upon by a landlord would amount to a "reasonable excuse" for committing an offence. This is especially so in circumstances, such as in this case, where it is far from clear that the landlord's agent has any responsibility to advise on HMO licensing or the risk of committing any potential offence, and where the landlord's licensing obligation was apparent from the face of the tenancy agreements it entered into.

60. The Tribunal needs not determine, as far as the period when the Property was under Abbot Fox's management is concerned, whether BCR's lack of actual knowledge that an HMO licence was required amounts to a reasonable excuse for not having applied for one (whether for part or all of the period). However, had it needed to decide that point, it would have found in the circumstances that it did not have a reasonable excuse, certainly from February 2023 onwards when it signed a tenancy agreement specifying the Property was an HMO requiring a licence.

61. Be all that as it may, this is not to suggest that the Tribunal believes Abbot Fox has done nothing wrong. It was very surprised that Abbot Fox had not raised the very obvious issue of HMO licencing when proposing to let the Property to 5 unrelated individuals. As far as it can tell from the evidence before it, there is a good argument that Abbot Fox was committing the offence of being in control of an unlicensed HMO. However, none of these issues, in the circumstances, amount to a reasonable excuse for BCR not having applied for an HMO licence.

62. As to the period from 29 June 2023 onwards, in addition to all of the above considerations, there is no doubt whatsoever that BCR was fully aware that an HMO licence was required for the Property. Lomond's email did not refer to the possible ramifications of failing to apply for one (as far as the Tribunal can tell – it did not receive a complete copy of Lomond's email). However, BCR had very recently instructed Lomond, in accordance with terms of business that read as much as advice to Lomond's employees and its clients about HMO licensing requirements as recording the parties' agreement. A cursory glance under the bold heading "**19. MANDATORY HMO LICENSING**" would have informed BCR that it is a criminal offence not to have a licence, a self-evidently serious matter.

63. Despite this, neither Lomond nor BCR took any immediate (or even relatively prompt) action. No real action was taken until over 6 months' later in January 2024, and even that consisted of only very introductory steps at first.

64. BCR submits that Lomond took on responsibility for applying for a licence, which is reflected to an extent in its email of 29 June 2023. It wrote: "*Our team are starting the process of reviewing the documentation required to submit an application on your behalf*". This was not a clear commitment that it did not expect BCR to act also, as required to do by Lomond's terms of business. It was the practical step envisaged by clause 19.6 of their agreement, that Lomond will take steps to "*ensure that the [HMO licensing] legislation is observed*". Accordingly, this is matter over which BCR, as landlord, had equal responsibility under the Housing Act 2004, and primary responsibility under its contract with Lomond. BCR took a purely passive approach, failing even to chase Lomond for updates. The Tribunal found this especially surprising considering BCR found itself in that position due its previous agent's alleged failures.

65. Even had the Tribunal been satisfied that Abbot Fox's failure to raise the issue with BCR provided it with a reasonable excuse for failing to apply for a licence, and even if it considered that a certain period for regularisation should be allowed once it did become aware of the requirement by 29 June 2023, the Tribunal found that any such period would have expired by 9 August 2023, almost 6 weeks' later. Quite simply, by then, even on the most generous view, BCR did not have any reasonable excuse for failing to apply for a licence (or alternatively a temporary exemption).

66. Accordingly, the Tribunal found, beyond reasonable doubt, that BCR had committed an offence and was doing so throughout the period in dispute.

Issues 3 and 4: whether to make a rent repayment order and in what amount?

67. The Tribunal determined that there are good reasons for requiring an HMO to be licensed, hence it is an offence not to. It is a serious matter not to have sought a licence or temporary exemption. A landlord is expected to be proactive in relation to management and, especially, safety of their properties. An HMO licence greatly assists with that by providing a framework for engagement with the local housing authority and ensuring compliance with applicable safety and amenity standards through conditions.

68. Although BCR has argued that its agents should also be held responsible for the offence, the fact that they may have been committing similar offences over the same period of time and failed to provide adequate or prompt advice in relation to HMO licensing, does not change that it was primarily BCR's responsibility to have and/or obtain knowledge about its obligations in relation to HMO licensing. It was incumbent on it to have done far more. It committed the offence over a considerable time. It had numerous opportunities to inform itself of the situation and address it, but failed to take them. By June 2023, there was no argument it was unaware of the

situation. It should have been aware of the severity of it. By 9 August 2023, it had still taken no steps to address it and did not for many months afterwards. Although an HMO licensing offence is not inherently the most serious offence for which a rent repayment order can be made, in this case it had lasted for a particularly lengthy period of time after BCR was aware of the issue. No interim steps were taken to address the safety risks to the Applicants such delay occasioned. It took no proactive or expeditious steps to bring itself into compliance.

69. As it transpired, obtaining a licence would have posed a challenge for 2 main reasons: cost (of structural works and insurance) and legal/administrative with respect to the lease containing a covenant not to use the Property as an HMO. The latter was a matter of which only BCR was (or should have been) aware. There is no suggestion that Abbot Fox was aware of the terms of BCR's lease with the freeholder of Sentinal House. Neither was Lomond initially.

70. The Tribunal noted that within a month of first properly engaging with the issue in January 2024, and within 3 weeks of approaching PM Norfolk, Lomond had a relatively through understanding of these issues. BCR promptly took the decision to terminate the tenancy.

71. The Tribunal found there was no reason at all why that information could not have been sought and obtained by 9 August 2023 to allow a decision about the HMO to be taken much sooner.

72. The only resolution may well have been to seek to bring the tenancy to an end. But there are various ways to reach that end. The way in which BCR chose to go about things can be summarised as follows. To largely ignore the issue for 6 months, maximising the rental income in the interim, to conceal the issue as much as possible (both before investigating it and thereafter) and then to seek to evict the Applicants by serving an (invalid) section 21 notice prior to having taken steps to regularise the situation. In parallel, it failed to recognise that a core purpose of the HMO licensing regime is to ensure tenant safety, for instance from fire risks, and to take the necessary steps to ensure that those risks were rapidly mitigated pending any final resolution of the matter (whether by terminating the tenancy or otherwise).

73. The Tribunal appreciates that this is not at all how BCR said that it views its actions, but it is the reality once it is understood that a landlord must take proactive steps to inform itself about its obligations and responsibilities.

74. An alternative approach would have been to urgently (or at least expeditiously) investigate the licensing issue and decide on what steps to take, urgently undertake whatever upgrades to the Property as would be required for safety reasons in the interim and notify relevant parties. These parties would obviously include Norwich City Council, who should have been made aware of the unlicensed HMO, whether directly or through the application for a temporary exemption notice. This was a necessary step to obtaining possession of the Property by rendering any section 21 notice valid. BCR could also have notified the Applicants (noting that students

moving accommodation in the summer is a wholly different proposition to doing so in the middle of an exam period). It could possibly have offered to assist them to find alternative accommodation, as it was ultimately BCR's negligence that required them to vacate. Additionally, consideration should have been given to notifying the freeholder – as significant additional insurance premiums were required, it's likely that Sentinel House's insurance would have been invalidated at least insofar as damage was caused by issues linked to the Property's use as an HMO.

75. There is no single response to what could or should have happened. In reality, as the Applicants ended up vacating the Property without the need for Court proceedings, this was always likely to have been possible. Prompt informal engagement with them to explain the situation may have been all that was required. That may have come at a financial cost, but, as these proceedings demonstrate, that has not been avoided.

76. What is clear is that the approach taken by BCR was entirely out of line with the intent and purposes of the HMO licensing regime. The existence of the HMO remained hidden to Norfolk City Council for almost a year after BCR became aware of it. The Applicants remained in accommodation that what was not suited to being a HMO, including posing greater fire risk than it should have done. BCR took no tangible steps to tackle the issue that it had created and its ramifications.

77. Accordingly, the Tribunal was satisfied both that it should make a rent repayment order, and that it should be set at a relatively substantial level. After taking all of the above factors into account, it considered that this was a particularly serious instance of this offence and that, as a starting point, it should order BCR to repay 80% of the rent received during the period in dispute.

78. When the Tribunal further factored in the respective conduct of the parties, it noted that there was nothing negative of note about the Applicants' conduct. The Tribunal rejected the suggestion that the Property had not been left in a reasonably clean state. What issues were identified on their departure were nothing other than expected "wear and tear". Indeed, to the contrary, despite having had the legal right to refuse to vacate the Property, the Applicants committed to doing so in the midst of an exam period that put at least some of them in significant difficulty.

79. As to BCR's conduct, it served the Applicants with an invalid section 21 notice and refused to provide a reason for the termination of their tenancy. There is no obligation to do so, but equally the notice should never have been served. The precise terms of section 75 of the Housing Act 2004 are instructive. It is clear that a "purported" notice should not be served either. It would (and did) contain entirely inaccurate information about both BCR and the Applicants' respective rights, which simply put undue pressure on the Applicants to vacate. That is precisely what happened in this case: the Applicants felt obliged to vacate the Property in light of the invalid section 21 notice, when there was no legal requirement for them to do so.

80. In the circumstances, it was clear to the Tribunal that part of BCR's reasoning was specifically to avoid raising awareness that the Applicants had been living in an

unlicensed HMO, which did not satisfy the safety standards that they could have expected. Their tenancy agreement clearly stated that the Property was licensed. Coupled with BCR's failure to alert Norfolk City Council of the matter, the Tribunal considered that this dismissive and deceptive behaviour warranted further sanction.

81. It considered increasing the order to 100% of the rent claimed, but determined that 90% would be appropriate. This was because BCR had placed some reliance on Lomond's advice, having been informed that the latter would progress the licensing issue on its behalf. It acted swiftly upon receipt of that advice. It was also Lomond that chose to issue the invalid section 21 notice on Form 6A. BCR gave no precise instructions on the process to follow, so did not act intentionally in relation to either point.

82. On both counts, however, BCR retains responsibility and demonstrated considerable default. It should not have delayed action awaiting Lomond's advice. As regards the section 21 notice, an agent's actions, once authorised, can be taken as those of its principal. It is unclear what other "notice" BCR would have instructed Lomond to "serve". Clearer instructions could have been given. The Applicants gave BCR the opportunity to rescind the notice and it did not. For this reason, these factors only provide limited mitigation. BCR cannot simply rely on Lomond's actions to excuse its own failures.

83. The Tribunal determined that no adjustment would be appropriate in respect of BCR's financial circumstances. BCR had not submitted any information to demonstrate that it would suffer any undue financial difficulty in satisfying any order. It holds leases over a large number of properties, many or all of which are rented, so the Tribunal did not consider that it would obviously be placed in any financial difficulty.

84. As to the precise calculation of the rent repayment order, the Tribunal proceeded as follows, noting that there was no universal credit to take into account. The applicable rental period was 9 August 2023 to 6 June 2024. The Applicants had only initially claimed repayment of rent paid between 10 August 2023 and 27 May 2024. However, the rent paid during this period related to the rental period beginning 9 August 2023 and ending on the termination of the Applicants' tenancy on 6 June 2024. The final instalment of rent was not paid as such, but the parties accepted that they had agreed that the final rent would be taken from the Applicants' deposit. In accordance with section 52 of the Housing and Planning Act 2016, such a form of payment can be considered rent paid for the purposes of making a rent repayment order. The Tribunal did so.

85. All rent due for the period was paid. This amounted to £2,500 for the month 9 August – 8 September 2023, and £2,800 per month thereafter. Up until 8 May 2024, the rent due and paid was therefore £24,900 (£2,500 + 8 x £2,800). For the final part-month of the tenancy 9 May – 6 June 2024, the daily rate of rent was £91.80 (£2,800 x 12 / 366 (2024 being a leap year)). For the 29-day rental period, the rent due and

paid was accordingly £2,662.20. The rent referable to the entire period was therefore £27,562.20 (£24,900 + £2,662.20).

86. BCR was ordered to repay 90% of this rent, which amounts to £24,805.98. Divided equally between the Applicants, this provides a sum of £4,961 (rounded to the nearest pound). This is the sum the Tribunal ordered be paid to each Applicant.

Issue 5: Tribunal fees

87. As it had awarded a considerable sum, the Tribunal was satisfied that it should also order BCR to reimburse the Applicants the £110 application fee each Applicant incurred, together with the £227 hearing fee. The Tribunal was unsure whether the Applicants apportioned the hearing fee between themselves and, if so, in what proportions. Accordingly, the Applicants are to inform BCR to whom this final sum should be reimbursed and it must be paid by BCR as requested.

Judge M. Hunt

11 August 2025