



# EMPLOYMENT TRIBUNALS

**Claimants:** Ms N Kaur  
**Respondent:** London Property Guru

**Heard at:** London South **On:** 9 July 2019

**Before:** Employment Judge Martin

## Representation

**Claimant:** In person  
**Respondent:** Mr Clair - Solicitor

# RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The effective date of termination of the Claimant's employment is 31 July 2018.
2. The Claimant's claim for unauthorised deductions from wages succeeds in relation to pay up to 31 July 2019 and the Respondent shall pay to the Claimant £1,967.28.
3. The Claimant's claim for unauthorised deductions from wages in relation to commission payments for tenancies negotiated is dismissed.
4. The Claimant's claim for unauthorised deductions from wages in relation to unpaid incentive bonus fails.
5. The Claimant's claim that the Respondent failed to provide her with an itemised payslip is dismissed. The Claimant has now received a payslip.
6. The Respondent failed to pay the Claimant outstanding holiday accrued on termination of employment and shall pay to the Claimant £392.29.

## RESERVED REASONS

1. By a claim presented to the Tribunal on 16 July 2018 Claimant claimed that the Respondent failed to provide an itemised payslip, failed to pay holiday and failed to pay commission and incentive bonus. The Claimant also brought a sex discrimination claim which was separated from this hearing and for which a separate order has been made.

2. This is a very difficult hearing for many reasons. First, the Respondent provided only one bundle meaning there is no bundle for the witness table. The Claimant had a copy of the bundle on her telephone as it been emailed to her which was not ideal. The order of the Tribunal: a case management discussion on 7 November 2018 was for the Respondent to bring at least five copies of the bundle to the Tribunal on the morning of the hearing. The Claimant did not provide a witness statement and therefore her particulars of claim her claim form were used as her statement. During the evidence, it became apparent that both parties had failed in their obligation to disclose documents which are relevant to the issues as ordered. For example, in his evidence Mr Stepani would say that he could bring the document to the Tribunal later date. The Claimant referred to other documents she had which were not in the bundle. This was less than ideal. The Tribunal proceeded and the decision was made on the basis of these documents which are before the Tribunal at the hearing. Both parties having had the opportunity and indeed the obligation to have disclosed them earlier.
3. Having read the witness statements I told the parties that I was not prepared to listen to evidence about how good or bad they thought the other party was. This was something which was prevalent throughout the witness statements and there was clearly a lot of bad feeling between the parties. Therefore, when the Claimant was cross-examining Mr Stepani he was the only person giving evidence, I stopped a line of questioning which was about Mr Stepani's reasonableness and behaviour within the business. Mr Stepani complained during the hearing that witnesses were being allowed to give evidence about his behaviour. I had asked his representative who has asking questions on his behalf why he was pursuing this line of questioning and I was told it was to go to the credibility of the witness. On this basis I therefore allowed it. Mr Stepani complained that he had come to the Tribunal to give his evidence. Mr Stepani did give his evidence and was allowed to give evidence on the matters which were relevant to the issues that I had to decide, but nothing else.
4. There was a dispute between the parties about when the Claimant's employment ended. The Respondent said the Claimant's employment ended on 20 June 2018 following the Claimant's resignation which was given orally on 13 June 2018 and in writing on 15 June 2018. The Claimant's evidence is that she gave notice that her employment should end on 31 July 2018. The Claimant was unable to produce a copy of her resignation letter as this was on the company computer and the Respondent has failed to disclose it. In her claim form the Claimant has said that her employment ended on 18 June 2018. This was a Monday following the written resignation the previous Friday, and when the Claimant attended work she was told by a member of staff (not one of the directors) to hand over the keys and not attend for work. Mr Stepani said this was usual practice when an employee gave notice. This was the only communication the Claimant had from the Respondent about her not attending for work.
5. The Claimant's claim form at box 5 states the employment ended on 18 June 2018. However, in box 15 "additional information" she states that she gave notice expiring on 31 July 2018. In the response, the Respondent

ticked the box to state agreed with the dates the Claimant had put (although the Tribunal considered its most likely it was agreeing to the date of 18 June 2018).

6. The Respondents case is that even if it had the Claimant had given notice expiring on 31 July 2018 (which it did not concede), then the Respondent gave counter notice of one week which was all that was required under its contract thus bringing the Claimant's employment to an end on 20 June 2018.
7. Given the absence of any documentary evidence and in particular any evidence from the Respondent about the circumstances in which the Claimant was asked not to return to work I find on the balance of probabilities first that the Claimant did give notice expiring on 31 July 2018. I accept her explanation that she gave this date both to give her time to find another job and for the Respondent to find a replacement.
8. I do not accept that the Respondent gave counter notice to terminate the Claimant's employment of one week. In order to bring a contract to an end there has to be a positive action in giving notice to the other party. I'm satisfied the Claimant gave notice to the Respondent but there was simply no evidence to substantiate the Respondent's argument that it gave counter notice to the Claimant. There was no letter written by the Respondent produced, and no witness evidence about what was said when the Claimant was told not to return to work. The Claimant's evidence she was simply told not to come into work and she expected to be paid for the remainder of her latest period. The effective date of termination of employment is therefore 31 July 2018.
9. This means that the Claimant is entitled to wages up to 31 July 2018 and her holiday entitlement must be calculated to this date as well. The Claimant was paid to 20 June 2018 and therefore the balance due to the Claimant (including basic pay, car allowance and petrol allowance) is £1,967.28 based on weekly earnings of £327.88. There are six weeks from 20 June to 31 July.
10. In relation to commission payments this part of the Claimant's claim is dismissed. The Claimant did not provide documentation proving what properties she was claiming for despite saying she had a diary or similar which had not been disclosed and was not at the Tribunal. The burden is on the Claimant to prove her loss. I appreciate that the paperwork is with the Respondent and also appreciate that the Respondent has failed to disclose any documents. Had the Claimant produced her document I may have decided differently. I also take note that the Claimant only notified the Respondent which properties she was claiming for on the day of the hearing so the Respondent did not have this information.
11. The Claimant's claim for incentive pay is dismissed. The Claimant said that there was an incentive scheme that if a certain number of tenancy agreements were finalised in a certain period then there would be a cash in hand tax free payment of £350. The Respondent denies that any such incentive would have been given, especially as all payments are made via

the payroll system. Even if there had been such an agreement, it would have been an illegal agreement as it would have been designed to avoid tax and national insurance being paid on this sum. Both parties were aware of the illegality and therefore this agreement is not enforceable.

12. It was agreed that the Claimant had taken two days annual leave in the leave year. The Respondent pays statutory holiday pay and therefore the Claimant is entitled to 11.8 days holiday. The Claimant has taken two days annual leave and there were three bank holidays in her employment. her outstanding entitlement is therefore 6.8 days.
13. The Tribunal is aware that the Claimant was paid a basic salary plus commission. The Tribunal has no information about what commission payments the Claimant received in the twelve weeks prior to the termination of her employment and is therefore not able to aggregate these payments for the purpose of coming to a daily rate of pay. The Tribunal has therefore only been able to take the Claimant's basic salary of £15,000 into account. On this basis the Claimant's daily rate of pay (dividing her salary by 260) is £57.69. The Claimant is therefore entitled to accrued holiday pay of £392.29.

Employment Judge Martin  
Date 12 August 2019