



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

Case reference : **LON/00AW/TFA/2019/0001**

Property : **Flat 7A, 24 Sloane Square, London
SW1W 8AX**

Applicant : **(1) Edmund Guy Wallace
(2) Steven Wallace**

Respondent : **Ms Thienkim Luu Diep**

Type of application : **For recovery of all or part of a holding
deposit: Tenant Fees Act 2019**

Tribunal member : **Judge Timothy Powell**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **25 September 2019**

ORDER

Order

The tribunal makes the following Order, pursuant to section 15 of the Tenant Fees Act 2019 (“the Act”):

- (1) On or before 7 October 2019, the respondent shall re-pay the second applicant the amount of £510 paid in respect of the holding deposit for Flat 7A, 24 Sloane Square, London Sw1W 8AX; and
- (2) In accordance with section 15(11) of the Tenant Fees Act 2019, such Order is enforceable by order of the county court as if the amount payable under the Order were payable under an order of that court.

Background and reasons

1. On 16 July 2019, the first applicant applied to the tribunal for an order that the respondent repay the sum of £510, paid as a holding deposit under the Tenant Fees Act 2019 (“the Act”) which, despite requests, the respondent had not repaid.
2. On inquiry, the second applicant confirmed that he had paid the holding deposit on first applicant’s behalf. Accordingly, the tribunal added him as a party to the proceedings.
3. Neither party requested an oral hearing and this decision was made on the papers.
4. Upon consideration of the application form and supporting documents, the respondent not having responded to the application or the tribunal’s directions, the tribunal is satisfied of the following matters.

The facts

5. On 24 June 2019, the first applicant emailed the respondent to ask about the availability of accommodation she had advertised in central London. On 26 June 2019, the respondent confirmed that her studio flat in Sloane Square, Chelsea, was available at a rent of £680 per calendar month, including bills and utilities. The deposit was to be £600. She also sent the first applicant photographs of the flat.
6. In subsequent correspondence, the respondent required the first applicant to pay a holding deposit of £510 being three weeks’ rent; after which a viewing could be arranged. The email of 28 June 2019 stated that “Note that if there is any changes in taking the flat after viewing, you will be refunded back your 3 weeks rent deposit which you have paid as stated in the tenancy agreement and upon agreeing to take the flat after inspection, the remaining move in fee has to be paid in cash or bank transfer before moving into the flat.”
7. The first applicant and respondent agreed that the tenancy would be for a period of 6 weeks only, from 19 July 2019, to cover an internship in London that the first applicant had arranged for himself. The respondent sent him a generic tenancy agreement, a photocopy of her passport identity page and confirmation of her current address in Liverpool. Once the first applicant had approved the agreement, she sent him a signed and completed copy, which confirmed that the address of the proposed tenancy was Flat 7A, 24 Sloane Square, London SW1W 8AX (“the housing”). The respondent then sent him her bank details; and, together, they discussed arrangements for an inspection of the flat.
8. On 3 July 2019 and on behalf of the first applicant, the second applicant paid the respondent the sum of £510 (“the amount”) by online bank transfer as a holding deposit in respect of the proposed

tenancy of the housing. That payment was made on behalf of the first applicant, who intended to take the proposed tenancy.

9. Having received the holding deposit, the respondent sought more money from the first applicant as a pre-condition to a viewing of the housing; and then failed to attend the agreed meeting with the first applicant, at 6pm on 9 July 2019. Thereafter, the respondent stopped communicating with the first applicant, the tenancy did not go ahead on 19 July 2019 and, despite requests, the respondent did not return the holding deposit to him.
10. In her first email, the respondent described the housing as “my studio flat” and on the draft tenancy agreement provided to the first applicant she named herself as “The Landlord”.

The law

11. Section 1(1) of the Tenant Fees Act 2019, provides that: “A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England”.
12. By section 3(1): “For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1.”
13. Holding deposits are dealt with in paragraph 3 of Schedule 1 to the 2019 Act. Schedule 2 to the Act sets out circumstances in which a person who received a holding deposit must repay it. Section 15 of the Act makes provision for the recovery of amounts paid.
14. The payment of £510 by the second applicant on behalf of the first applicant falls within the definition of a “holding deposit”. As the payment represents three weeks’ rent, the excess over one week is a prohibited payment and the respondent, by requiring it to be paid is in breach of section 1 of the Act.
15. The balance of one week’s rent was a permitted payment under the Act, but, as the landlord and tenant failed to enter into a tenancy agreement before the deadline for agreement, being 17 July 2019, it must be repaid within 7 days of that date; though, despite requests, the respondent has not repaid the amount of £510.
16. Accordingly, by its Order made under section 15(9) of the Act, the tribunal requires the respondent to repay the whole amount of £510 on or before 7 October 2019.
17. By section 15(11) of the Act, this Order is enforceable by order of the county court as if the amount payable under the Order were payable under an order of that court.

Name: Timothy Powell

Date: 25 September 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).