FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/TRA/2019/0008**
Property	**:**	**65 Collinson Court, Great Suffolk Street, London SE1 1PA**
Applicant	**:**	**Ms Rina Fang**
Respondent	**:**	**Ms Rose Nathan**
Type of application	**:**	**For recovery of all or part of a holding deposit: Tenant Fees Act 2019**
Tribunal member(s)	**:**	**Judge Nicola Carr**
Date and venue of hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**7 February 2020**

DECISION

Order

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

(1) On or before 21 February 2020 the respondent shall repay to the applicant the amount of £580 paid in respect of the holding deposit for 65 Collinson Court, Great Suffolk Street, London SE1 1PA; and

(2) In accordance with section 15(11) of the Tenant Fees Act 2019, this Order is enforceable by order of the county court as if the amount payable under the Order were payable under order of that court.

The application

1. On 20 November 2019 the applicant applied to the tribunal for an order that the respondent repay the sum of £580, paid as a holding deposit under the Tenant Fees Act 2019 ('the Act') which, despite requests, the respondent has not repaid.

2. On 26 November 2019 the tribunals made directions for the determination of whether the sum should be repaid under section 15 of the Act.

3. The respondent has not complied with those directions nor responded to the application.

4. Neither party has requested an oral hearing, and therefore the tribunal makes the following decision on the papers.

The Facts

5. On 7 September 2019 the applicant paid by way of BACS payment to the respondent a holding deposit in the sum of £580 in connection with the property at 65 Collinson Court, Great Suffolk Street, London SE1 1PA ('the housing'), as evidenced by the bank statement of the applicant annexed to her application. This was acknowledged as received by the respondent from an email address used by the respondent throughout the relevant period. In that email, the respondent informed the applicant that the tenancy agreement would be ready to sign the following Wednesday lunchtime.

6. As set out in the tenancy agreement accompanying the application, this was to secure an assured shorthold tenancy agreement between the respondent, applicant and two further prospective tenants. That tenancy was due to commence on 15 September 2019.

7. On 13 September 2019 it appears from the applicant's application that the parties signed the tenancy agreement and the appellant paid by BACS payment to the respondent the further sum of £5,414, representing a month's rent in advance and a security deposit of 5 weeks' rent, as evidenced by the applicant's bank statement. The rent was to be £2,514 per month, first payment on signing and thereafter on the 14th of each month (according with the start date of the tenancy).

8. On 14 September 2019, the respondent informed the applicant that the housing would not in fact be available on 15 September 2019 due to the previous tenants refusing to move out. In an email sent at 2.03pm on the same date from the same email address as in paragraph 5 above, she suggested alternative accommodation in Pimlico that could be

offered at the same rent '*as a goodwill gesture for letting you down*', and her agent could arrange viewings. Alternatively, '*if unsuitable I will arrange to transfer the funds you paid into one bank account*'.

9. That alternative accommodation was not considered suitable by the applicant and other two prospective tenants. On 16 September 2019 at 11.49am the respondent wrote to the applicant as follows:

'We have reached an Agreement with the current tenants. The flat will be available on 3 October for Check-in. I realise this is not ideal, and it's the best we can do.

If you are not able to wait, we understand and will refund your monies. Kindly discuss and can one of you email me your decision by this afternoon.'

10. At 8.56am the following morning (17 September 2019), the applicant emailed the respondent and confirmed that she and the other prospective tenants would like their money returned. She provided her bank details for the purpose.

11. On 18 September 2019 the respondent purported to have refunded the monies. The applicant responded and asked for the holding deposit back. In response, the respondent stated that it would not be returned until she found suitable new tenants. She stated as follows:

'You withdrew from the signed Tenancy agreement. We offered you a great alternative flat for the interim period in Pimlico which is being rented at £600pw including all bills. Even arranged for parking at my expense. I am sure we will find great Tenants and so the matter can be concluded. I won't be replying to any more emails until then.'

12. The applicant emailed a response a little over 20 minutes later asking for confirmation of where in the contract it stated that she and the other prospective tenants had to accept alternative accommodation or the deposit would be withheld, and pointing out that the contract was for the property for 12 months from 15 September 2019, which had not been delivered. The respondent made no response.

13. On 19 September 2019 the applicant emailed to the respondent a formal request for return of the deposit under the Tenant Fees Act 2019, setting out her understanding of the law. She required the respondent to provide her written response and evidence supporting retention of the deposit, saving which the applicant would apply to the tribunal. The respondent made no response.

14. The formal application was made to the tribunal and in due course directions were issued. The tribunal, lacking a response from the

respondent, made efforts to get in contact with her including by way of email to the same email address from which she had been corresponding with the applicant during the relevant period. On 24 January 2020 an email was returned, alleging that the email address belonged to someone else named 'Sairah'. The email demanded in larger font size that matter be brought to the attention of the 'Judge'.

The Law

15. Section 1(1) of the Act 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'.

16. A payment is a prohibited payment for the purposes of the Act unless it is a permitted payment found in Schedule 1 (s3(1)). Paragraph 3 of Schedule 1 makes provision for the permitted taking of a holding deposit, limited to one week's rent, and providing the landlord has not already taken a holding deposit in connection with the housing and failed to repay it in whole or in part.

17. Section 15 of the Act sets out that a relevant person may make an application to the tribunal for recovery from the landlord of the amount of the holding deposit remaining unrepaid (s 15(3)(a)), where a landlord has breached Schedule 2 of the Act and all or part of the holding deposit has not been repaid (s 15(2)(a) – (b)).

18. By section 1(9) of the act a 'relevant person' for the purposes of the Act is a tenant or person acting on behalf of a tenant as their guarantor. By the definitions in section 28(1) 'a tenant' includes a person who proposes to be a tenant under a tenancy.

19. Schedule 2 of the Act sets out the requirement to repay the holding deposit as follows:

3. Subject as follows, the person who received the holding deposit must repay it if –

(a) the landlord and the tenant enter into a tenancy agreement relating to the housing,

(b) the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing, or

(c) the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.

4. If paragraph 3 applies, the deposit must be repaid within the period of 7 days beginning with –

(a) where paragraph 3(a) applies, the date of the tenancy agreement,

(b) where paragraph 3(b) applies, the date on which the landlord decides not to enter into the tenancy agreement, or

(c) where paragraph 3(c) applies, the deadline for the agreement.

20. 'Housing' for the purposes of the Schedule is defined in section 28 as '*a building, or part of a building, occupied or intended to be occupied as a dwelling*'.

Determination

21. The tribunal determines, absent any evidence to the contrary, that the holding deposit was a permitted payment for the purposes of the Act, falling as it did within the requirements of Schedule 1 paragraph 3.

22. The question therefore is whether any of the conditions in Schedule 2 paragraphs 3(a) – (c) are met; and if they are, whether the exception in Schedule 2 paragraph 10 applies. If at least one of the conditions is made out, and the exception does not apply, then by section 15 the holding deposit may be recovered.

Paragraph 3(a)

23. The applicant relied, in her email of 19 September 2019 to the respondent, on the fact that a tenancy agreement had been entered into and therefore the holding deposit must be refunded within seven days of when the agreement was signed.

24. The tribunal has not been provided with a signed copy of the agreement, but has been provided with an unsigned copy and has no reason to doubt the applicant's case that the parties signed it on 13 September 2019 as this accords with the BACS transfer of one month's rent and the tenancy deposit from her bank account.

25. In the circumstances then, within the letter of the Act the holding deposit must be refunded under section 15. The only reason the tenancy agreement did not go ahead is because the respondent was incapable of fulfilling its terms.

26. The respondent, having failed to respond in these proceedings, has not put forward a case for any of the exceptions in Schedule 2, and none can be seen as applicable.

Paragraph 3(b)

27. If the conclusion in paragraph 25 above is incorrect on the basis that the tenancy agreement was impossible to perform at least from 14 September 2019 (and possibly from the date it was signed), nevertheless the holding deposit is returnable under paragraph 3(b) of Schedule 2 of the Act.

28. This is confirmed by the respondent's emails from 14 September 2019 onwards, indicating her repudiation of the tenancy agreement. That being the case, the applicant confirmed on 17 September 2019 that she and the other prospective tenants required a refund of the monies paid. That confirmation operated as acceptance of the repudiation of the contract by the respondent, and left the parties in the position as if the tenancy agreement had never been entered into.

29. If that is the case, the provisions of Schedule 2 paragraph 2(1) of the Act applied. The deadline for the agreement in relation to the housing was 15 days from the payment of the holding deposit, i.e. 23 September 2019. The respondent's offer of alternative accommodation in Pimlico was not the housing with which the holding deposit was concerned.

30. In those circumstances, paragraph 3(b) is clearly applicable, as the respondent decided before the deadline for agreement not to enter into a tenancy agreement relating to the housing, where the housing is defined by the Act as the subject property.

Paragraph 3(c)

31. For the avoidance of doubt, the facts as set out in paragraphs 27 – 30 above, coupled with the fact that the respondent's proposal of a later date of 3 October 2019 for commencement of the tenancy agreement of the housing was outside of this time limit, result in paragraph 3(c) of Schedule 2 of the Act also taking effect in the event.

Notice of application

32. It is clear that the email address used by the tribunal in its attempt to contact the respondent and encourage participation in this application is the same as that used by the respondent in her correspondence with the applicant. It seems unlikely that a personal email address has been transferred to someone else. However, it is unnecessary to make a determination on that matter, as the application has been served on the address provided by the respondent in the tenancy agreement as her address for service of notices.

Determination

33. For the above reasons, the respondent is in breach of the Act whether under Schedule 2 paragraph 3(a), or paragraphs 3(b) and (c).

34. Accordingly, by its Order made under section 15(9) of the Act, the tribunal requires the respondent to repay the whole amount of £580 to the applicant on or before 21 February 2020.

35. By section 15(11) of the Act, this Order is enforceable by the order of the county court as if the amount payable under the Order were payable under order of that court.

Name: Nicola Carr **Date:** 7 February 2020

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).