



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

Case Reference : **BIR/00CN/HTC/2020/0003**

Subject Property : **Apartment 101
Westside Two
Suffolk Street
Queensway
Birmingham
B1 1LY**

Applicant : **Xingna Fu**

Representative : **Ian Henery Solicitors Ltd**

Respondent : **Howard Wen-Haur Chao**

Type of Application : **Application under section 15 of the
Tenant Fees Act 2019 for the recovery of
prohibited payments**

Tribunal Member : **Deputy Regional Judge N P Gravells**

Date of Order : **26 May 2020**

DECISION AND ORDER

Preliminary

- 1 This is a decision on an application by the Applicant, Xingna Fu, the tenant of Apartment 101, Westside Two, Suffolk Street, Queensway, Birmingham B1 1LY ('the subject property'). By the application, under section 15 of the Tenant Fees Act 2019 ('the 2019 Act'), the Applicant seeks the recovery of alleged prohibited payments that she was required to make to the Respondent, the landlord of the subject property.
- 2 The application was received by the Tribunal on 26 March 2020. On 3 April 2020 the Tribunal issued Directions for the determination of the application.
- 3 Paragraph 16 of the Directions required the Respondent to provide a statement in response to the Applicant's case not later than 24 April 2020. Having received no such statement from the Respondent, the Tribunal issued a Notice on 27 April 2020, informing the Respondent that, if he failed to comply with paragraph 16 of the Directions by 4.00pm on 12 May 2020, the Tribunal would be minded to bar the Respondent from taking further part in the proceedings, pursuant to rule 9(3)(a) and (7)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Tribunal received no communication from the Respondent; and the Tribunal therefore ordered that the Respondent was barred from taking further part in the proceedings.
- 4 The Applicant indicated on the application form that she would be content with a paper determination, that is a determination without an oral hearing. The Tribunal was of the view that a paper determination was appropriate in this case and proceeded to determine the application on the basis of the documentation submitted by the Applicant.

Determination

The relevant law

- 5 Section 1 of the 2019 Act provides (so far as material) –
 - (1) 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.
 - (9) In this Act 'relevant person' means –
 - (a) a tenant, or
 - ...
- 6 Section 3(1) provides –

For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1.
- 7 Schedule 1 lists ten permitted payments, including rent, tenant deposit, payment in the event of a default, payment in respect of council tax and payment in respect of utilities.
- 8 Paragraph 2 of Schedule 1, which concerns tenancy deposits, provides (so far as material) –
 - (1) A payment of a tenancy deposit is a permitted payment.

(2) In this Act ‘tenancy deposit’ means money intended to be held (by a landlord or otherwise) as security for—

(a) the performance of any obligations of a tenant, or

(b) the discharge of any liability of a tenant, arising under or in connection with a tenancy.

(3) But if the amount of the tenancy deposit exceeds—

(a) the amount of five weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000, or

...

(4) In this paragraph—

(a) ‘five weeks’ rent’ means five times one week’s rent,

...

the amount of the excess is a prohibited payment.

9 Section 15 provides (so far as material) –

(1) Subsection (3) applies where—

(a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and

(b) all or part of the prohibited payment has not been repaid to the relevant person.

...

(3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of—

(a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit;

...

(9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period specified in the order.

(10) A period specified under subsection (9) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the order is made.

(11) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court.

Application to the present case

10 The Applicant is the tenant of the subject property under an assured shorthold tenancy agreement dated 31 October 2019 for a term of one year commencing on 6 September 2019. The tenancy therefore commenced after the coming into force of the 2019 Act on 1 June 2019.

11 The required payments which the Applicant alleges to be prohibited in the present case fall into two categories –

- (a) payments already made (specifically (i) £139.00 for the net cost of replacing a washing machine and (ii) a tenancy deposit of £1000.00); and
 - (b) payments potentially payable pursuant to the terms of the Applicant's tenancy agreement (specifically payments for (i) early vacation of property, (ii) extension of term, (iii) tenant change and (iv) late payment of rent or return of keys).
- 12 In a number of respects, as intimated in the Directions issued on 3 April 2020, the Tribunal finds that the application is misconceived.
- 13 First, the Applicant seeks, pursuant to section 214 of the Housing Act 2004, repayment of the whole tenancy deposit of £1000.00 (and further 'compensation' of £2000.00) on the ground that the landlord failed to comply with the requirements of an authorised tenancy deposit scheme. However, jurisdiction under section 214 is conferred on the County Court: the First-tier Tribunal has no jurisdiction under section 214.
- 14 Second, the jurisdiction of the First-tier Tribunal in respect of tenancy deposits is limited to that conferred by the 2019 Act. Under paragraph 2 of Schedule 1 to that Act tenancy deposits are permitted payments, provided that the amount of the deposit does not exceed the amount of five weeks' rent (where, as in the present case, the annual rent does not exceed £50,000). Where the deposit does exceed that amount, only the amount of the excess is a prohibited payment and recoverable under section 15. In the present case, five weeks' rent is £842.31, which means that the amount of the excess is £157.69 (£1000.00 less £842.31).
- 15 Third, it is clear from the wording of section 15 of the 2019 Act that that section only provides for the recovery of prohibited payments *actually paid and received*. It follows that the Tribunal has no jurisdiction in respect of potential payments provided for in the tenancy agreement but not yet paid and received, even if such payments may be prohibited by the terms of the 2019 Act.
- 16 It therefore follows that the only payments in respect of which the First-tier Tribunal has jurisdiction in the context of the present application are (i) £139.00 for the net cost of replacing a washing machine and (ii) the excess tenancy deposit of £157.69.
- 17 It appears from the documentation submitted by the Applicant that the Respondent received from the Applicant the payments referred to in paragraph 16 above.
- 18 Furthermore, the Tribunal determines that neither payment is a permitted payment by virtue of Schedule 1 to the 2019 Act, from which it follows that those payments are prohibited payments within the meaning of the 2019 Act.

Order

- 19 Accordingly, pursuant to section 15(9) of the 2019 Act the Tribunal orders that the Respondent pay to the Applicant the sum of £296.69 **not later than 9 June 2020**.

26 May 2020

Professor Nigel P Gravells
Deputy Regional Judge