



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

Case Reference : CHI/21UC/HTC/2020/0003

Property : Flat Above 108 Cavendish Place,
Eastbourne BN21 3TZ

Applicant : Miss Jacqueline Tocher

Representative : Holden and Co LLP

Respondent : Jalal Jewel Uddin

Representative : ---

Type of Application : Recovery of Prohibited Payment – Sections
15(3)(9) of the Tenant Fees Act 2019

Tribunal Member(s) : Judge Tildesley OBE

Date of Decision : 21 September 2020

DECISION

Background

1. The Applicant tenant seeks under Sections 15(3) of the Tenant Fees Act 2019 (“the Act”) for the recovery of a prohibited payment in the sum of £3,076.92.
2. On 17 August 2020 the Tribunal allocated the Application to the fast track and listed it for hearing on 2 September 2020 at Havant Justice Centre by means of telephone conferencing. The Tribunal directed the Application would stand as the Applicant’s case. The Respondent was required to provide a written statement if he disagreed with the Application.
3. On 2 September 2020 Mr Holden, solicitor, appeared the Applicant. The Respondent attended in person.

The Evidence

4. The Applicant stated in her application that she was required to pay £4,000.00 by way of deposit on or about 20 September when taking a six month assured shorthold tenancy in respect of the property. By letter dated 8th June 2020 the Applicant’s solicitors wrote to the Respondent pointing out to him that the maximum sum he could hold by way of deposit amounted to £923.08 and that he was required to return the sum of £3,076.92 within 28 days. The rent payable under the tenancy was £800 per calendar month. The Respondent did not respond to the letter.
5. At the hearing Mr Holden referred to the tenancy agreement made between Jalal Uddin as “Landlord”, and Jacqueline Tocher and Nigel Dawes as “Tenant”. The rent payable under the tenancy was £800 per month. The term dealing with the Deposit stated as follows

“Deposit: A pre-contract security will be paid to the landlord of the value of £4000 to hold the property prior to the actual tenancy agreement being entered into. This is paid in good faith and does not legally oblige the tenant to move into/live in the premises. If the landlord is not satisfied that the premises have been left to a satisfactory condition, the landlord is permitted to deduct costs, but not limited, from the value of the deposit”.
6. The Respondent stated that the monies for the deposit had been provided by The Children Services for East Sussex County Council.

The Respondent supplied an email from a Jacqui Whiles, senior social worker, dated 30 September 2019 confirming the payment.

“It was good to talk to you today at the property that the Tocher family are wanting to rent from you. As you are aware the local authority children’s services are willing to assist with a payment of 6 months up front to cover the cost of deposit and 5 months’ rent in advance and this is because the family are unable to secure a guarantor.

If you are agreeable with this, the family will be entitled to housing benefit from the date of the tenancy and that should be paid directly to Jacqueline Tocher every two weeks. I would suggest that you negotiate that the rent is always paid upfront so that issue with payments in the future do not occur. The local authority would not enter into any further agreement to fund accommodation in the future and this is a one off arrangement”.

7. The Respondent stated he was involved in an ongoing court case with Ms Tocher. The Respondent indicated that he was withholding £2,100.00 from the £4,000.00 deposit for damage to his flat and had also taken the last months’ payment of rent of £800.00 from the deposit. The Respondent said that this left £1,100.00 to be returned to the Tenants of which £550.00 had been paid to Mr Dawes.

Consideration

8. The stated aims of the Tenant Fees Act 2019 are to make renting fairer and more affordable for tenants by reducing costs at the outset of a tenancy, and to improve transparency and competition in the private rental market¹.
9. The 2019 Act achieves its aims by placing restrictions on the type and extent of fees that landlords and agent can charge tenants. Under section 1(1) of the 2019 Act 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. Under section 3(1) a payment is prohibited unless it is a permitted payment by virtue of schedule 1 to the 2019 Act.
10. The payment of a tenancy deposit is a permitted payment but if the amount of the tenancy deposit exceeds the amount of five weeks rent where the annual rent in respect of the tenancy immediately after its grant is less than £50,000.00 the amount of the excess is a prohibited payment.
11. The 2019 Act applies to relevant persons which means a tenant (section 1(9)(a) or subject to subsection (10), a person acting on behalf of, or who has guaranteed the payment of rent by a tenant

¹ Tenant Fees Bill Explanatory Notes

(section 1(9)(b). The reference in section 1(9)(b) to a person does not include (a) a local housing authority within the meaning of the Housing Act 1985

12. The payment must be in connection with a tenancy of housing in England which includes an assured shorthold tenancy (section 28).
13. The agreement in this case was entered into on 20 July 2019 which was after the 1 June 2019 when the 2019 Act came into force.
14. The Tribunal finds the following:
 - a) The 2019 Act applied to the tenancy in this case
 - b) The agreement required the payment of a deposit of £4,000 from the tenant to the landlord. The rent payable under the agreement was £800.
 - c) The payment of the deposit is a permitted payment but the amount of the permitted payment is limited to five weeks rent which in this case was £923.08. The balance of £3,076.92 is a prohibited payment.
 - d) East Sussex County Council paid the Respondent £4,800.00 to secure the tenancy for the Respondent. The Respondent applied £4,000.00 of that to the deposit.
 - e) There was no evidence that the tenant was required to repay East Sussex County Council the sum of £4,000.00.
15. The issue turned on whether the Applicant was entitled to an Order requiring repayment of the prohibited payment of £3,076.92 despite the fact that the Applicant did not make the payment to the Respondent.
16. Mr Holden argued that this issue was to be determined by the contractual obligations under the agreement. The Applicant was jointly and several liable to pay the deposit under the tenancy, and, therefore, she was entitled to the repayment of the amount of the deposit that represented the prohibited payment.
17. The Tribunal disagrees. The purpose of the 2019 Act is to return payments of prohibited payments to tenants who have made the payment. This is reinforced by the provisions of section 1(9) of the Act which gives persons who have guaranteed the payment of rent by a tenant a right to bring proceedings under the 2019 Act in their own name.

Decision

18. In this case the Applicant did not make the payment of £4,000.00 which was made by East Sussex County Council. The Applicant was

not liable to repay the County Council the sum of £4,000.00. It would offend the purpose of the Act if the Applicant received a windfall. The Tribunal declines to make an order for repayment of £3,076.92 to the Applicant under section 15(9) of the 2017 Act.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.