FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HA/HTC/2020/0004
Property	**:**	33 Caledonian Road, Bath, BA2 3RD
Applicant	**:**	Hafsa Wain
Representative	**:**	
Respondent	**:**	Josephine Vercoe
Representative	**:**	
Type of Application	**:**	Recovery of Prohibited Payment – Sections 15(3) and (5) of the Tenant Fees Act 2019
Tribunal Member(s)	**:**	Judge J Dobson
Date of Hearing	**:**	11th November 2020
Date of Decision	**:**	18th November 2020

DECISION

Summary of Decision

1. **The Tribunal Orders the Respondent to pay £50 to the Applicant.**

Background and history of the case

2. The Applicant tenant applied under Section 15(3) of the Tenant Fees Act 2019 ("the Act") for the recovery of a £50 holding deposit. The Applicant referred to various provisions within Schedule 2 of the Tenant Fees Act 2019. The Tribunal gave Directions as to the cases to be presented and listed the application for hearing by way of video proceedings. The Respondent requested more time for her response by application dated 12th October 2020 but then did provide her response within the time directed. It appears to have therefore been perceived that the application did not need to be considered- although see below. Separately, the original listing had to be delayed due to unavailability, being re-listed on the above date.

The law

3. Relevant matters relating to the ability to apply are contained in sections 1 and 15 of the Act. The specific provisions in relation to holding deposits paid to a landlord in respect of a proposed tenancy are set out in Schedule 2 of the Act. The relevant parts of the Act are set out in the Appendix to this Decision. Neither party relied on any case authorities.

The hearing

4. The hearing was conducted as video proceedings. Both parties attended. There were no representatives or other witnesses.

5. It was apparent in the course of the hearing that a number of other emails, a draft contract and possibly other document exist which may have been relevant. However, neither of the parties produced those. I explained that the parties could not submit additional evidence later, save in one instance of a particular email at the end of chain submitted by the Applicant with her application and which the Respondent asserted should have been included but which post-dated that application, and then if both parties agreed to that item being admitted.

6. The Respondent raised the fact that the Applicant did not provide to her the evidence submitted in support of the application. That was, it transpired, mentioned in her application for more time for her response but as that application was perceived not to be relevant on receipt of the Respondent's response, it appears that the application was not referred to a Judge. The Applicant accepted that she had not served that evidence saying that the information said that she had to send a copy of the

application to Respondent but did not refer to sending the evidence in support. It was unclear why the Respondent did not receive a copy of the evidence with the application and the Directions from the Tribunal. The upshot was the Respondent had not seen the evidence during the proceedings prior to the hearing.

7. I explained to the Respondent about the Applicant's bank statement submitted with the application. I went through the emails relied on by the Applicant, namely one from her to Monica Danson- Scadden on 10th February 2020, who was described by the parties as the "lead tenant"- as explained below and which term is adopted for her in this Decision- and three between the Applicant and the Respondent in August 2020. The Respondent indicated that she was aware of all of those and so with the agreement of the Respondent, the hearing proceeded.

The Applicant's case, including oral evidence

8. The Applicant stated an original intention to rent 33 Caledonian Road, Bath ("the Property") with six other tenants who were existing flatmates at the University of Bath or other friends of the Applicant. Four of them- not including the Applicant- viewed the Property- twice- and reported back to the others. The group agreed to rent the Property, proof of identity and personal details were provided to the Respondent and a draft tenancy agreement was produced. There was one contract for the whole Property, as opposed to separate ones for separate rooms. A holding deposit was paid after the viewings, all other intended tenants paying to the lead tenant for her to pay a lump sum, which she did. The Applicant did not provide evidence of specific dates for the above but provided evidence of payment of £50 from her bank account to the lead tenant and email evidence dated 11th February 2020 of payment of a holding deposit for the Property having been made by the lead tenant to the Respondent. The Applicant was not sure why there was a lead tenant but said Monica had been appointed and she had been involved in the most communication.

9. The Applicant stated that having sent the required personal information and related, a larger deposit and the signing of the contract were required. The Applicant said that it had all been a rush, she was unsure if she would be staying and that she asked the lead tenant for more time to decide. She also said that she would help to find a replacement tenant. She accepted that to have prompted the lead tenant to contact the Respondent. She said that the other tenants presumed that she would not proceed and posted an advert, that she was not told about any communication from the Respondent- most notably about her share of the holding deposit not being returned- and that the others found a replacement tenant. The Applicant took no other steps.

10. Subsequently, a replacement tenant was found, who it is said also paid a holding deposit. The Applicant said that she assumed that the £50 would be refunded when the replacement tenant was found. The Applicant said that she spoke to the lead tenant about a refund of the holding deposit and that Monica thought that it was not refundable, but did not tell her the

Respondent had already said it would not be refunded. The Applicant accepted that she did not contact the Respondent.

11. The Applicant enclosed with her application emails demonstrating that the Applicant emailed the Respondent in August 2020 to request a refund, including saying "however, due to a change of plans they have found a replacement tenant for me." The Applicant did not explain why she only contacted the Respondent about the holding deposit some six months later than it was paid and why no contact was made with the Respondent in or about later February 2020.

12. The Respondent's email enclosed with the application said, "The deposit you paid was a holding deposit and was clearly labelled as such. Since you decided not to proceed with the contract we are entitled to keep the holding deposit you paid to compensate us for the additional admin and other charges we incurred in your deciding not to rent after the contract was issued".

13. The Applicant asserted in her reply that the Act requires a landlord to set out in writing why they are retaining a deposit within seven days of deciding not to let the tenant if before the deadline for agreement or within 7 days of the deadline for agreement. The Applicant stated that much longer than 7 days has elapsed and that the landlord had not contacted the Applicant. She also referred to guidance urging landlords to consider whether it is necessary to retain the holding deposit even where entitled to do so and referring to covering specific costs. The Respondent was also said not to have provided evidence of any costs incurred, which the Applicant asserted to be relevant in her statement of case. She added in her oral evidence that there had still been no evidence of costs provided.

The Respondent's case, including oral evidence

14. The Respondent started her statement of case by stating that she had not received any payment from the Applicant and that all payments were received from the lead tenant. The Respondent further stated that the Applicant withdrew after the contract was issued. She said that the deposit was kept as low as possible "at £350 (= £50 per tenant)". The Respondent quoted at some length from the government-issued "Tenant Fees Act 2019: Guidance for landlords and agents", adding comments about statements made in the Guidance. That quotation started with a section referring to a group of tenants and the Respondent referred to having received a sum from the lead tenant. The next relevant comment is that the Respondent took a holding deposit from the replacement but after she had told the lead tenant that she would "retain £50 holding deposit since the Applicant had withdrawn to cover costs…."

15. The Respondent continued with comments that she had provided the appropriate information, including a sample contract- she also repeated those matters in oral evidence. The Respondent in her written case re-iterated in response to the section of the Guidance that states "A holding deposit can only be retained where a tenant……. withdraws from a

property" that the Applicant withdrew, on the date on which the signed contract was due to be returned and again re-iterated that in oral evidence. The Respondent stated that she informed the lead tenant by email that she would retain £50 in relation to the statement in the Guidance that "You must set out in writing why you are retaining a tenant's …. holding deposit within 7 days….". The specific date is not recorded. She also detailed the costs that she had retained the £50 to cover. Those costs were explained in oral evidence not to be expenses but what she regarded as the costs of her time.

16. One attachment to the statement of case was submitted, being an email to the lead tenant and the lead tenant's reply agreeing the accuracy of the information set out. That email stated, amongst other matters, that there had been one payment of £350, that "you [the lead tenant] found out that Hafsa Wain [the Applicant] was withdrawing from the contract on the day it was due to be returned after repeated attempts to contact her which I understand from you was greatly inconvenient and stressful for you".

17. The Respondent explained in oral evidence that a lead tenant is required where there is a group and the lead tenant is the person with whom she liaises so that there is consistency and that it would be impractical to have to deal with communications from each tenant. She asserted that to be "absolutely standard practice where …multiple tenants". It is the lead tenant in whose name the full deposit is registered with a scheme, although the details of all tenants are endorsed on the certificate. She stated that she was not interested in how the tenants split the one rent, which the tenants might vary from equally, for example to reflect size of rooms. She added that she did not know at the time who had paid to the £350 and did not consider it, although the Respondent accepted in response to questioning by the Applicant that she would probably have assumed each tenant paid equally, i.e. £50 each, if she had considered it.

18. The Respondent also explained that the date on which the contract was to be returned was 14th February 2020, the date by which the rest of the deposit was also to be paid. She said in oral evidence that she received a voicemail that day from the lead tenant anxious because one of the tenants- the Applicant- had decided to withdraw and concerned as she couldn't return the signed contract. The Respondent commented on the demand for property in Bath but said that she would give the tenants a few extra days. She repeated that the lead tenant told her that the Applicant had withdrawn and the Applicant did not tell her anything. She also said that the lead tenant told her that the Applicant was difficult to get in touch with and appeared to suggest that to be a further reason not to contact her.

19. The Respondent accepted that she did not inform the Applicant that she would retain the £50 of the holding deposit. She accepted having the Applicant's details. The Respondent said that as she had received no payment from the Applicant, she communicated with the lead tenant and that from her perspective there was no reason to liaise with the Applicant.

Consideration

20. This case concerns what is on any analysis a very small sum to be the subject of proceedings. However, the dispute has to be addressed all the same and the circumstances, especially as to the holding deposit payment, are ones which, at least in terms of the payment of the holding deposit by or for multiple tenants, are likely to occur frequently. I deal with one element at a time, identified by sub- headings.

21. I note the stated aims of the Act 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 market. The 2019 Act achieves its aims by placing restrictions on the type and extent of fees that landlords and agent can charge tenants. The payment of a holding deposit beyond a limited sum is a prohibited payment. There is also a separate right of action under schedule 2 of the Act if the holding deposit is not returned where it is required to be.

22. I have also considered the Guidance issued by the Ministry of Housing, Communities and Local Government about the Act for landlords and for tenants. There is also a third set of Guidance for enforcement authorities. Whilst those are Guidance and not part of the Act, they give an indication as to the intentions behind the Act and the envisaged operation of its provisions and so provide some assistance with interpretation.

Is the Applicant someone able to apply for repayment in principle?

23. The Act provides at section 15(3) that a "relevant person" may apply. Relevant person is defined in section 1(9) as "(a) a tenant, or (b) subject to subsection (10), a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant."

24. I find that the Applicant is a tenant for the purpose of the Act. There was not simply one tenant but rather seven, of whom one happened to have been agreed to be the lead tenant. The Applicant was one of those seven. The Act does not say that the Applicant must be the only tenant and the Applicant is as much a tenant if one joint tenant of several as she would be if the only tenant. The proposed tenancy is as much one in respect of the Applicant if it is hers as one of several as it would be if hers alone.

When was the deadline for agreement?

25. Given that no actual agreement was entered into between the Applicant and Respondent, it is appropriate to identify the deadline for agreement. As provided for in the Act, that was the fifteenth day after the holding deposit was received by the Respondent. No different date was agreed. Given that the Respondent's email dated 11th February to the lead tenant is dated 11th February 2020 and states that the deposit had been received that day, the deadline for agreement was 26th February 2020.

Did the Applicant pay a holding deposit for the purpose of the Act?

26. Paragraph 1 of Schedule 2 states the provisions of the Schedule apply "where a holding deposit is paid" and "in respect of a proposed tenancy". There is no room for doubt that a holding deposit was paid and I have found was paid for a proposed tenancy to be held by the Applicant, amongst others. I find that the deposit was paid in respect of that.

27. The Schedule says relatively little about the maker of the payment, although does in paragraph 5(b) refer to "the person who paid the deposit". Section 15(2) refers to "a holding deposit paid by a relevant person". It has been established that the Applicant is a relevant person but the question is whether it was she who paid the deposit.

28. If the Applicant were to be found not to have paid a deposit, that would be the end of the matter- she could not claim repayment, there being nothing to claim repayment of. Neither I consider can it have been envisaged that an Applicant could be entitled to receive any share of a holding deposit paid on behalf of a number of tenants to which she had not contributed.

29. The parties agreed, and I adopt that, that no payment passed between the Applicant and the Respondent directly. The Respondent submitted that she had received no payment of a holding deposit from the Applicant.

30. The Act says nothing else about a payment having to be made directly. Nothing in the Act prevents an indirect payment still being a payment. Most significantly, the Act does not preclude a payment being made by one of a number of tenants but on behalf of some or all of them, as agent for all of them for that purpose. I find that is what happened in this case.

31. The situation in this case where a group of persons intended to take out a joint tenancy is hardly an unusual one. Equally, one person being the lead tenant for the purpose of providing the name under which a (non-holding) deposit is registered and for practical reasons is not uncommon, accepting the Respondent's evidence. It is further not hard to imagine that in many cases- although inevitably I do not have precise figures- the landlord receives one sum to which the various intended tenants have contributed. No doubt there are also cases in which each individual proposed tenant pays an individual sum to the landlord. However, I have no difficulty accepting that landlords may frequently ask to receive a single sum, as being administratively more convenient for them, and that they receive that in response, the individual tenants having paid sums to one of them who sends on the whole.

32. I consider in light of that and the wider purpose of the Act that it would be wrong to place too great a hurdle on an Applicant in recovering a share of a holding deposit paid on that originally intended tenant's behalf as part of a wider whole holding deposit and where the Applicant contributed. The Applicant plainly paid the £50 contribution to the overall holding deposit as being her per person share and did so specifically on the basis that the lead tenant would pass that sum, and the sums from the remainder of the

intended tenants, to the Respondent as the holding deposit. This is not a case in which the Applicant is seeking to claim a sum having laid no money out: she is not seeking to receive a windfall.

33. I accept that there was no evidence before me that the lead tenant, who did pay the deposit to the Respondent, specifically identified to the Respondent that £50, or indeed any sum, had been received by her from the Applicant. The Respondent did, I however find, treat the sum of £50 as being the holding deposit in respect of the Applicant. The Respondent referred to retaining that sum rather than any other sum. The Respondent asked for another £50 from the tenant who replaced the Applicant.

34. It would not have been unduly complicated for the landlord to ask of the lead tenant whether part of the payment had been made by the Applicant, if she were uncertain about that and prior to referring to the £50 sum. As the Respondent treated £50 of the holding deposit payment as the holding deposit of the Applicant, she must have at least considered the likelihood that each tenant contributed that sum to the overall holding deposit.

35. Taking a purposive approach to the interpretation of the Act, in my judgment, the payment of the £50 by the Applicant to the lead tenant as the Applicant's contribution to the overall holding deposit then paid by the lead tenant to the Respondent in respect of the intended tenancy for the several intended tenants was a payment by the Applicant to the Respondent.

Do any of the repayment provisions apply?

36. Paragraphs 3 to 5 of Schedule 2 to the Act set out circumstances in which the deposit must be repaid. The Applicant's case concentrates on the effect of paragraph 5, which provides an alternative, to paragraph 3. However, the wording of that paragraph and of paragraphs 10 and 11, which are the potentially relevant paragraphs to which paragraph 5 refers, are not as simple to follow as they ideally might be.

- Paragraph 5 (1)(a)

37. Paragraph 5(1)(a) does not take the, at first blush more obvious, approach of requiring the deposit to be repaid if one of paragraphs 8 to 12 inclusive apply. Instead it requires the deposit to be repaid if "the person holding the deposit…. believes that any of the paragraphs 8 to 12 applies" and then does not give a notice in writing. On its face, the effect of that provision is that a landlord who believes that one of paragraphs applies has to repay the deposit: a landlord who does not believe that one of those paragraphs apply does not have to repay. In that event, whether or not one of the paragraphs actually applies does not determine the answer.

38. That would render repayment dependent not the reality of the situation but on the belief of the landlord about it, which would, if a subjective test were applicable, mean that a tenant would not know whether the deposit would likely to be returned from one case to the next. A Tribunal would

necessarily have to list a hearing of every application made to test the credibility of the landlord's asserted belief. Such uncertainty and consequent time and potential cost, together with the inevitable disincentive for the tenant to seek the return of the holding deposit, cannot sensibly have been Parliament's intention.

39. Whilst the provision does not refer to a reasonable belief, in my judgment the only way of reading the provision to enable it to be workable in practice is to read into the paragraph the word "reasonably" before the word "believes", such that an objective test applies. Consideration can then be given to whether a reasonable landlord would in the given circumstances believe that one of paragraphs 8 to 12 apply. Inevitably, facts will differ from case to case and there could be no hard and fast rule. However, at least a realistic assessment could be made by parties as to whether a holding deposit would be likely to be found to be repayable.

40. The alternative approach would be to read the clause as if the words "that person believes that" did not exist, so that simply the deposit must be repaid on any occasion that one of paragraphs 8 to 12 apply. I respectfully consider that would have been the preferable approach to drafting, the one most consistent with paragraphs 3 and 4 and the one most obviously consistent with the aim of the Act. However, I do not consider that I can read the provision pretending that words specifically included by Parliament are instead absent.

41. It seems to me that the objective approach to belief, reading the paragraph as if it contained the word "reasonably" is the correct one.

- Paragraphs 8 to 12

42. The next question is whether any of paragraphs 8 to 12 apply. Paragraphs 8 to 12 set out a number of exceptions to the operation of paragraphs 1 to 5. Paragraphs 8, 9, and 12 very clearly do not apply.

43. Paragraph 10 could potentially apply. The effect of paragraph 5(1)(a) and paragraph 10 in combination is, I consider, that if the landlord believes, objectively reasonably, that the tenant has notified the landlord before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement then either the landlord must inform the tenant within the relevant period why the landlord intends not to repay or otherwise the landlord must repay.

44. If the tenant has actually notified the landlord, it is difficult to see any situation other than that the landlord will reasonably believe that the tenant has. In contrast, if the tenant has not notified the landlord, it is likely to be difficult to reach a finding other than that the landlord must reasonably believe that the tenant has not.

45. The Applicant said that she told the lead tenant that she needed more time to consider whether to proceed with the tenancy. The Respondent was not a party to any conversation or other communication between the Applicant

and the lead tenant and so cannot gainsay the Applicant's oral evidence. I do not need to consider the evidence in detail because the question to answer is whether the Applicant notified the Respondent. The Applicant did not contact the Respondent- on that both parties agreed.

46. It necessarily follows from the above that the Applicant did not notify the landlord before the deadline for agreement- 26th February 2020- or at all that she had decided not to enter into a tenancy. I find that the Respondent cannot reasonably have believed that the Applicant had notified her and did not so believe. I consider that paragraph 10 is not applicable. Therefore, if that were the end of the matter, the application would succeed because paragraph 3(c) would apply and so too would paragraph 4.

47. However, it cannot be ignored that amongst the provisions paragraph 5(1)(a) refers to is paragraph 11. That provides that paragraph 3(c) does not apply if (a) the landlord takes all reasonable steps to enter into a tenancy agreement and …(c) the tenant fails to take all reasonable steps before that date. By excluding paragraph 3(c), paragraph 11 produces the result that, if the tenant has not taken all reasonable steps to enter into the agreement no part of paragraph 3 can apply. The Respondent cannot be required to repay as a matter of course pursuant to that paragraph. That leaves whether potential repayment pursuant to paragraph 5 applies.

48. The effect of paragraph 5(1)(a) and paragraph 11 in combination is that if the landlord believes, reasonably, that the landlord has taken all reasonable steps and the tenant has failed to do so then either the landlord must inform the tenant in writing within the relevant period why the landlord intends not to repay or otherwise the landlord must repay.

49. I find that the Respondent did take all reasonable steps: I find that the Applicant did not take all reasonable steps. I find that the reason for no agreement being entered into between the parties was because the Applicant did not proceed, whereas she could have. At the very least, she acquiesced in her potential tenancy falling away. Having asked for more time, the Applicant gave no evidence that she then took any steps to enter into the agreement. She gave no evidence that she challenged the advertisement placed by the other tenants for a replacement for her. She gave no evidence that she said at any time that she wanted to proceed. When a replacement was found, she was apparently content with that, she did nothing more to enter into the agreement herself and she only sought to query the return of her holding deposit.

50. I further find that the Respondent did believe, both subjectively and objectively, that she had taken all reasonable steps to enter into a tenancy agreement with the Applicant and that the Applicant had not. For that reason, paragraph 3(c)- and so paragraph 4 also- do not apply.

- Paragraph 5(1)(b)

51. Notwithstanding the reason for the tenancy agreement not being entered into, the Respondent still has to repay the holding deposit to the Applicant

unless the Respondent gave her a notice within the relevant period in writing pursuant to paragraph 5(b) explaining why the deposit would not be repaid. That relevant period was within seven days of, in this instance, the deadline for agreement.

52. That seven days expired as at 4th March 2020. The Respondent did not, I find, give the Applicant the required notice in writing.

53. I accept the Respondent's evidence that she told the lead tenant in writing by email why she intended not to repay the £50. I find on balance, and given that the Respondent's statement of case refers to that email and directly in reference to the Guidance stating she must inform the tenants within 7 days, that she told the lead tenant within the relevant period. However, she did not tell the Applicant, whose money it was. The Applicant's case was that the Respondent did not contact her within the relevant time. The Respondent accepted not contacting the Applicant within that time. The reason for not returning the holding deposit was only given in August 2020 and so far too late.

54. It follows that the Respondent is in breach of the requirements of the Act and that the Tribunal must order repayment.

55. This outcome may well seem harsh to the Respondent. However, the entitlement of the landlord to retain a holding deposit is tightly proscribed- for example, even where the tenant notifies of withdrawal, the landlord can only retain the deposit if it acts swiftly by contacting the tenant to explain the intention to retain and the reasons for that. It is apparent from the wording of the Guidance and the provisions of the Act that retention of a deposit, even where the landlord is entitled to do so, is very much the exception. The norm is unquestionably that a holding deposit is returned.

56. It may be a little administratively inconvenient to tell a particular tenant, not the lead one, who contributed to a holding deposit that a proportionate share is to be retained but that is nowhere close to being sufficient for a landlord or agent to avoid the requirement of the Act to do so.

Repayment

57. Whilst, the payment was actually made from the bank account of the lead tenant and not the Applicant, I have found that it was paid indirectly by the Applicant and sent on by the lead tenant on her behalf.

58. Repay is a commonly used word with a well- established meaning, "to pay back to" (see for example the Oxford English Dictionary), which suggests paying the person who gave the sum to you. On a strict interpretation, it might be arguable that repayment means paying to the lead tenant. However, given my findings as to the nature of the making of the payment, the repayment must be due to the Applicant who indirectly paid. I consider that to interpret repay to mean that the payment has to be made to the lead tenant would run contrary to the purpose of the Act.

59. I also note that the interpretation of "repay" has only just over a fortnight ago been considered in a decision by Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber) in *Rakusen v Jepsen and others* [2020] UKUT 0298 (LC). That related to whether a rent repayment order could be made against a superior landlord pursuant to the Housing and Planning Act 2016 and so a different provision about a different matter, but another instance of legislation designed to strengthen the rights of tenants. Section 40(2) refers to an order requiring a landlord to "repay" rent paid by a tenant and Counsel argued that money could only be paid back where it was directly paid to the person making the repayment. However, Martin Rodger QC said about that as follows:

> "I do not find [counsel's] restrictive reading of section 40(2) convincing. As a matter of language there is nothing incongruous in referring to a sum being "repaid" by a person who was not the original payee. The essence of a repayment is that it is a sum paid back to the person making the original payment. I do not regard it as indispensable that the person making the repayment should be the same person as received the original payment, or that only two parties should be involved, although both may often be the case".

60. The Upper Tribunal concluded that the superior landlord could repay to the tenant, albeit that the tenant paid to an intermediate corporate landlord.

61. I consider that, whilst in different circumstances in relation to a different statute and directed primarily to the person required to make the repayment rather than the person to whom the payment should be made, that statement nevertheless offer support to the approach I have taken.

Decision

62. The Respondent must repay the holding deposit of £50 to the Applicant by 2nd December 2020.

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

Appendix

Tenant Fees Act 2019

1 Prohibitions applying to landlords

(9) In this Act "relevant person" means—
(a) a tenant, or
(b) subject to subsection (10), a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant.

5 Treatment of holding deposit

Schedule 2 makes provision about the treatment of holding deposits.

15 Recovery by relevant person of amount paid

(1) .....
(2) Subsection (3) also applies where—
(a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
(b) all or part of the holding deposit 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;
(b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit.

.....

(6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that, with the consent of the relevant person—
(a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
(b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.

(7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.

(8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.

(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.

Schedule

Application

1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England.

Interpretation

2(1) In this Schedule "the deadline for agreement" means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.

(2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule

Requirement to repay holding deposit

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 agreement

5 (1) The person who received the holding deposit must repay it if-

(a) that person believes that any of paragraphs 8 to 12 applies in relation to the deposit, but

(b) that person does not give the person who paid the deposit a notice in writing within the relevant period explaining why the person who received it intends not to repay it.

(2) In sub-paragraph (1) "the relevant period" means-
(a) where the landlord decides not to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the date on which the landlord decides not to do so;
(b) where the landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the deadline for agreement.

Exceptions

.....

10 Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.

.....

13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement-
(a) the proposed landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or
(b) the landlord or letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.