



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

Case Reference : CHI/29UD/HTC/2021/0004

Property : 1 Bed Flat Wellcome Avenue DA1

Applicant : Imran Ullah Khan

Representative :

Respondent : Hulian Limited

Representative :

Type of Application : Recovery of a Prohibited Payment/Holding Deposit – Section 15 of the Tenant Fees Act 2019

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision on the papers without a hearing : 22 March 2022

DECISION

The Tribunal Orders the Respondent to refund the sum of £300 to the Applicant by 6 April 2022.

Background

1. The Applicant tenant seeks the recovery of a £300 holding deposit paid on 21 July 2021 part of which may constitute a prohibited payment.
2. The Applicant states that they agreed to rent a property subject to a satisfactory reference and at the letting agent's request paid a deposit of £300 to Hulian Limited. A satisfactory reference was not obtained, and the Applicant was unable to meet the additional requirements imposed.
3. The Applicant's request for repayment of the deposit has been refused.
4. In order to decide whether to order recovery of all or part of the amount the tribunal will determine whether part of the deposit was a Prohibited Payment and whether any of the exceptions contained in Schedule 2 apply.
5. The Tribunal made directions on 1 February 2022 setting out a timetable for the Respondent to explain why they should not refund the sum claimed and for the Applicant to respond.
6. The Tribunal sent the Directions to both parties, but no response has been received from the Respondent.
7. On 14 March 2022 the Tribunal made further directions that in the absence of a response from the Respondent it had considered whether it had sufficient information to determine the application without a hearing and decided that it had.
8. This determination is therefore made on the unchallenged evidence provided by the Applicant as outlined in paragraph 2 above.

The Law

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. Section 3(3) of Schedule 1 of the Tenant Fees Act 2019 limits holding deposits to 1 week's rent, any excess is treated as a Prohibited Payment. Schedule 2 contains the requirement to repay a holding deposit together with the exceptions. A full copy of Schedule 2 is at Appendix 1.

Tenant's Evidence

11. In support of the claim the tenant provides the following relevant evidence;

- An email from Melanie Simon on 21 July 2021 stating “I can confirm receipt of the £300 retainer, thank you. We can start referencing you and your wife”
- An email from Melanie Simon of Hulian on 2 August 2021 stating “your current income is lower than what you verbally told us.....As you haven’t provided details of a guarantor when you had someone at the viewing representing you as one and you haven’t provided all the document we need to reference you, your wife and potential guarantor, your retainer is non-refundable.”
- A response from the Applicant on 12 August 2021 stating” Let me repeat again that I didn’t give any guarantee that I would be able to provide guarantor and we never agreed on this. This is unfair and unreasonable justification to hold the deposit just because I’m unable to provide the guarantor If this is the core requirement then you should have advertised in your post on OpenRent or your colleague should have mentioned during viewing. Even on Open Rent you mentioned no admin fee, no Hidden charges while this property was advertised.”
- Undated Text exchanges between the Applicant and “Jason” of “OpenRent” which it is understood to be an online platform for landlords to advertise their properties to rent.
- An advertisement on OpenRent for a “1 Bed Flat, Wellcome Avenue DA1” for £820 per month and available from 10 June 2021.
- Confirmation from Barclays Bank of a payment of £300 on 21 July to “WA CHEEMA DEPOSIT FT”

Determination

12. From the evidence above the Tribunal finds that: -
- The proposed rent of the flat was £820 per month equating to £189.23 per week.
 - That a deposit of £300 was paid as acknowledged by Melanie Simon of Hulian Ltd.
 - That the payment made exceeds the one week’s rent permitted by Section 3(3) of Schedule 1 the excess of **£110.77 being a prohibited payment which the Tribunal Orders to be repaid.**
13. The Tribunal now turns to considering whether any of the exemptions referred to in Schedule 2 apply to the permitted Holding Deposit of £189.23.
14. Under Schedule 2 2(1) the “deadline for agreement” means the fifteenth day of the period beginning with the day the landlord or

letting agent received the holding deposit, in this case 4 August 2021.

15. Section 3 (c) requires the repayment of the deposit if the landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement. The Tribunal finds that this was the case.
16. Looking now at whether any of the exceptions applied the Tribunal is disadvantaged by the lack of any evidence from the Respondent. Taking each section in turn however Sections 6,7 and 8 do not appear relevant. Section 9 applies where the tenant “provides false or misleading information to the landlord or letting agent”
17. Sections 10 to 13 again appear not to be relevant.
18. In examining the circumstances and whether Section 9 applies the Tribunal has to consider whether misleading information was provided by the Applicant. The only relevant evidence on this point is the email exchange between Melanie Simon and the Applicant on 2 and 12 August 2021 regarding the amount of income stated verbally and whether the Applicant had said that a guarantor was to be provided.
19. The Tribunal is not satisfied on the balance of probabilities that the statement made by the Applicant in support of his application to rent the flat was “false or misleading”
20. **The Tribunal therefore Orders the Respondent to refund the sum of £300 to the Applicant by 6 April 2022.**

D Banfield FRICS

22 March 2022

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

Appendix 1

SCHEDULE 2 Section 5 TREATMENT OF HOLDING DEPOSIT

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

- 6 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—
 (a) towards the first payment of rent under the tenancy, or
 (b) towards the payment of the tenancy deposit in respect of the tenancy.
- 7 If all or part of the amount of the deposit is applied in accordance with paragraph 6(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.
- 8 Paragraph 3(b) or (c) does not apply if—
 (a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,
 (b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and
 (c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.
- 9 Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and—
 (a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or

(b) the landlord is reasonably entitled to take the tenant's action in providing false or misleading information into account in deciding whether to grant such a tenancy.

- 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.
- 11 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the landlord if—
 - (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and
 - (b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but
 - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 12 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent if—
 - (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and
 - (b) the landlord takes all reasonable steps to enter into a tenancy agreement before that date, but
 - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—
 - (a) the 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 a 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.