



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

Case reference : **LON/00AG/HTC/2021/0026**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Apartment G19, 65-69 Holmes Road,
London NW5 3AN**

Applicant : **Charles Kesser**

Representative : **In person**

Respondent : **Niche Estates**

Representative : **Vishal Pattni (Managing Director)**

Type of application : **For recovery of all or part of a
prohibited payment or holding deposit:
Tenant Fees Act 2019**

**Tribunal
member(s)** : **Judge Tagliavini
Miss M Krisko FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to] by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because one was not requested and all issues could be determined on paper. The documents that the Tribunal were referred to are in the application and accompanying documents from both parties.

The tribunal's summary decision

- (1) The tribunal orders the respondent to repay to the applicant the sum of £300 by **30 April 2022** in respect of a prohibited payment under the Tenant Fees Act 2019.
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The application

1. This is an application under sections 15(3) and (5) of the Tenant Fees Act 2019('the 2019 Act') seeking the repayment of a prohibited payment by the respondent in the sum of £300 paid in respect of his occupation of Apartment G19, 65-69 Holmes Road, London NW5 3AN ('the premises') as the respondent has acted in breach of section 2 of the 2019 Act.

The background

2. The applicant entered into an agreement dated 12 September 2019 for the occupation of the subject premises for the period 14 September 2019 to 5 September 2020 at the rate of £298 per week. The agreement was made between the applicant and The Stay Club (Kentish Town) Limited for whom the respondent acts as a letting agent.
3. The applicant subsequently paid the sum of £578 and a charge of £300 which was recorded as 'a handling fee' to the respondent of which £578 was remitted to the landlord and £300 retained by the respondent for the purpose of *'processing your booking and confirming availability of the property at the requested dates pending the signing of binding license agreements between both parties.'*

The applicant's case

3. In a letter to the tribunal dated 23 March 2022 the applicant asserted that the respondent landlord is a private limited company offering accommodation to full time students and disputed it was a licence rather than a tenancy. In any event, section 28 of the 2019 Act includes licences and lets to students as falling within the provisions of the 2019 Act and therefore the £300 handling/administration fee should be returned.

The respondent's case

4. The respondent asserted that the applicant was granted a licence to occupy the subject premises and was not an assured shorthold tenancy and therefore falls outside of the Tenant Fees Act 2019. Further, the

respondent asserted that the applicant agreed to the charge of £300 when making the room reservation and therefore is not due to be refunded.

The tribunal's decision and reasons

6. The tribunal finds the applicant's occupation of the subject premises falls within the provisions of the 2019 Act whether as a licence, a student let or as an assured shorthold tenancy.
7. The tribunal finds the payment of the £300 handling/administration fee is not a permitted payment within Schedule 1 of the 2019 Act and is therefore a prohibited payment and the respondent has acted in breach of section 2 of the 2019 Act.
8. The tribunal orders that the sum of £300 should be paid to the applicant by the respondent by **30 April 2022**.

Name: Judge Tagliavini

Date: 19 April 2021

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).