



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

**Case Reference** : **MAN/00BY/HTC/2021/0002**

**Property** : **42 Western Avenue,  
Liverpool  
L24 3UR**

**Applicant** : **Edvinas Misius**

**Representative** : **N/A**

**Respondent** : **Tyrer & Hart Landlord and Tenant  
Protection Limited**

**Representative** : **Antonia Williams**

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

**Tribunal** : **Regional Surveyor N Walsh  
Judge L Bennett**

**Date of Decision on  
the papers without a  
hearing** : **26 May 2022**

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**DECISION**

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## **DECISION**

**The Applicant is entitled to the return of the holding deposit of £183.00 and the Tribunal Orders the Respondent to refund the Applicant this sum within 14 days of the date of this decision.**

## **REASONS**

### **APPLICATION AND DIRECTIONS**

1. The Applicant applied for an order for the return of what is asserted to be a holding deposit of £183.00 (being the equivalent of one week of the proposed rent of £795.00), contending that, despite requests, the Respondent has not repaid that amount.
2. The Tribunal identified in Directions, dated 22 December 2021, that if the payment was a holding deposit within the meaning of the Tenant Fees Act 2019 (“The Act”), the Tribunal was empowered under section 15 of the Act to order recovery of all or part of that amount from the Respondent.
3. The Directions set out the steps to be taken by the parties to prepare the case for a determination and provided that the application would be determined on the papers unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the Directions and that the Tribunal would not inspect the Property.
4. No objection has been received to a determination on the papers. The parties have presented the evidence on which they wish to rely in accordance with Directions, which made it clear that the Tribunal would then determine this application on the papers. The sum involved is modest and significant additional time and cost would be involved in preparation for a hearing. Taking all of those matters into appropriate account and considering the over-riding objective of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, and being satisfied that we possess sufficient information to make a determination on the basis of the statements, submissions and supporting documents filed and served, the Tribunal is content to make its determination without holding a hearing. This is accordingly the Decision reached on the papers.

### **THE LAW**

5. The Act is one of a number of pieces of legislation enacted to enhance tenant’s rights. The Act places a prohibition on landlords and letting agents from charging most payments associated with a tenancy other than rent and authorised tenancy deposits (up to five or six weeks’ rent, dependent on the level of rent annually).

6. Much of the structure of the Act is built on the concepts of “prohibited payments” and “permitted payments”. Section 3 of the Act defines a payment as a prohibited one:
 

“unless it is a permitted payment by virtue of Schedule 1
7. Therefore, payments associated with a tenancy are prohibited unless by exception specifically permitted. Schedule 1 contains a list of permitted payments that is both long and detailed and must be considered in the context of the given case.
8. Section 15 provide that a relevant person can apply to the Tribunal for an order that the amount or part of the amount of a prohibited payment should be repaid to them. There are two conditions for making an application, namely that:
  - A) A landlord or letting agent is in breach of (section 1 or 2 or) Schedule 2 and as a result has received a prohibited payment which has not been repaid or repaid in full, or
  - B) [in relation to contracts with third parties]
9. Such an order must specify the time by which the repayment must be made, at least seven days but not more than fourteen days beginning with the day after that on which the order is made. The order is enforceable as if it were an order of the County Court.
10. By paragraph 3 of Schedule 1, payment of a holding deposit may be a permitted payment but there are stringent conditions. A holding deposit is defined as money paid to a landlord or letting agent before the grant of a tenancy with the intention that it is dealt with in accordance with Schedule 2 of the Act. Such a holding deposit is a prohibited payment to the extent that the amount exceeds one week’s rent.
11. Schedule 2 provides for when a holding deposit must be repaid and when it can be retained. In summary, a holding deposit must be repaid where:
  - a) The landlord and tenant enter into a tenancy agreement, unless the holding deposit is applied towards the first payment of rent due:
  - b) The landlord decides before the deadline for agreement not to enter into a tenancy agreement, in which event it must be repaid on that date. That deadline is the fifteenth day following the date the holding deposit is paid or such other period as it agreed in writing by the tenant.
  - c) The landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, in which event repayment must

be on the deadline for agreement date.

12. The deposit does not, in general, have to be repaid where an exemption applies, being amongst other provisions:

- i) The tenant notifies the landlord or letting agent before the deadline for agreement that they have decided not to enter into the tenancy agreement;

- ii) The landlord and/ or letting agent has taken all reasonable steps to enter into the tenancy agreement before the deadline for agreement but the tenant has failed to take all reasonable steps.

13. Under the 'Exceptions' outlined in Schedule 2, paragraph 9 states:

“ 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.

14. However, and notwithstanding the above paragraphs, the holding deposit must still be repaid where

- 1) The person holding the deposit considers that one of the exemptions applies but fails to give the tenant notice in writing within the relevant period (essentially seven days) explaining why it is not to be repaid, or

- 2) the landlord and tenant fail to enter into a tenancy agreement and the landlord or letting agent:

“behaves towards the tenant, or a person who is a relevant person 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” (or there is another breach of a manner not relevant here).

15. Statutory guidance has been issued by the Minister of Housing, Communities and Local Government. The guidance includes that a landlord or letting agent should stop advertising a house once a holding deposit has been paid.

## **APPLICANT'S EVIDENCE AND SUBMISSION**

16. The Applicant's case is primarily found in the application together with his enclosures which include:
- The Applicant's bank statement showing payment of the holding deposit of £183.00 on 1 March 2021.
  - An e-mail dated 28 February 2021 from Antonia Williams requesting payment of the holding deposit.
  - An e-mail from Mr Misius to Ms Williams dated 8 March 2021 complaining that the subject property was still being marketed despite his payment of the holding deposit on 1 March 2021.
  - An e-mail dated 16 March 2021 querying why contact had not been made with the named guarantor and references had not been sought.
  - E-mails dated 17 and 27 March 2021 requesting a response to previous e-mails and text messages.
  - An e-mail dated 1 April 2021 advising that the Applicant had just found out the subject property had been let to another party and requesting the return of the holding deposit.
  - Various and numerous messages sent via the Open Rent Messaging App between Mr Misius and Ms Williams concerning the payment of the holding deposit, the provision of a guarantor because the references did not provide enough "verifiable income", the financial requirements for a suitable guarantor and then chasing messages mirroring the Applicant's e-mails requesting a response and ultimately the return of the holding deposit.
17. In reply to the Respondent's case, the Applicant e-mailed the Respondent and the Tribunal stating that the information provided to the reference agency "was correct from our perspective looking at our income we had at the time and you did not contact us to investigate this further or raise any questions."
18. Finally, the Applicant goes on to state that "Landlords are only allowed to keep the holding deposit for 15 days, unless both parties agree another deadline in writing. If the landlord has failed to accept or reject the application by the deadline, then the money must be returned to the tenant in full."

## **RESPONDENT'S SUBMISSION AND EVIDENCE**

19. The Respondent's case was put succinctly in an e-mail and can be simply stated as follows:
- The Applicant provided incorrect and misleading information.
  - Specifically, Mr Misius stated his income was £31,929 per annum but the referencing agency showed this to be £0. Ms Ostalecka stated her income to be £20,000 per annum but the referencing agency verified her income to be in fact £17,699.

20. The Respondent helpfully enclosed the full credit reference statement which included the information provided by the Applicant and his partner or co-renter.

## **DISCUSSION AND DETERMINATION**

21. From the evidence above the Tribunal finds that;-
- The proposed rent of the flat was £795.00 per calendar month, equating to £183.46 per week.
  - That a holding deposit of £183 was paid, as acknowledged by the Respondent.
  - That the payment made does not exceed the one week's rent permitted by Section 3(30) of Schedule 1 of the Act.
22. The Tribunal now turns to considering whether any of the exemptions referred to in Schedule 2 apply to the permitted Holding Deposit of £183.00.
23. 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 16 March 2021.
24. 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.
25. The Tribunal is particularly focusing upon the exception claimed by the Landlord's agent. Namely that the Applicant provided incorrect or false information.
26. Having reviewed the information supplied by the Applicant to the reference agency, it is clear that the Applicant and his co-renter provided their current salaries while living and working in Enfield. The Applicant did explain that they were moving to Liverpool, hence the need to rent a new home, and that he would be unemployed when he moved. This was clearly disclosed on the form and in e-mail and text correspondence with the Respondent.
27. There is no evidence to suggest that “false or misleading” information was supplied. In fact, the reference agency, Let Alliance, could find no reason not to let to Ms Ostalecka and would be prepared to recommend the Applicant if he could provide a suitable guarantor. The Respondent then asked the Applicant to nominate a suitable and willing guarantor, which he did, but this was never followed up upon by the Respondent.

28. On the basis of the evidence before it and on the balance of probability, the Tribunal has no hesitation in finding that the Applicant did not provide false or misleading information and the Respondent did not take all reasonable steps to enter into a tenancy agreement.
29. The Applicant is therefore entitled to the return of the holding deposit of £183.00, which ought to have been repaid on 16 March 2021, because no tenancy agreement had been entered into by the deadline for agreement.
30. The Application accordingly succeeds.
31. The Respondent shall pay the sum of £183.00 to the Applicant within 14 days of the date of this decision.
32. There was no fee payable on the filing of the application by the Applicant and hence there is no such sum required to be refunded by the Respondent.

Regional Surveyor N Walsh  
26 May 2022