



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

Case Reference : **LON/00AC/HTC/2022/0002 P:REMOTE**

Property : **36 Quadrant Close The Burroughs
Hendon London NW4 3BY**

Applicant : **Mohit Motwani
Shubham Kastiya**

Representative : **Mohit Motwani**

Respondents : **Arlen Properties Ltd**

Representative : **No named representative**

Type of Application : **Return of holding deposit
Tenant Fees Act 2019**

Tribunal Member : **Judge F J Silverman MA LLM
Mr A Fonka MCIEH CEnvH M.Sc**

Date of paper consideration : **15 June 2022**

Date of Revised Decision : **28 June 2022**

DECISION

1 The Tribunal orders the Respondent to repay to the Applicants jointly and severally the sum of £346.15 representing their holding deposit on a rental property situated at 36 Quadrant Close, The Burroughs, Hendon, London N4 3BY. This sum must be returned to the Applicants within fourteen days calculated from 28 June 2022 and expiring on 11 July 2022.

2 The total sum payable to the Applicants is **therefore £346.15.**

REASONS

1. By an application made to the Tribunal on 13 January 2022, the Applicants seek a determination of their application for the return of their preliminary deposit from the Respondent under the provisions of the Tenant Fees Act 2019.
2. Directions were issued by the Tribunal on 21 April 2022.
3. This matter was determined by a paper consideration P:REMOTE on 15 June 2022 at which the Tribunal considered the Applicants' application and accompanying documents together with the bundles of documents filed by the respective parties for the hearing.
4. The Applicants were seeking accommodation in north London and inspected the property known as 36 Quadrant Close, The Burroughs, Hendon, London, N4 3BY (the property) which the Tribunal understands to be a two bedroom flat.
5. Following the inspection, the Applicants expressed an interest in entering a rental agreement with the Respondent and paid a preliminary deposit of £346.15.
6. The Applicants complied with the Respondent's request to supply identity and other documents and were assessed as creditworthy by the Respondents but were asked to provide a guarantor for the rent.

7. A guarantor was found and negotiations proceeded to the stage where the tenancy agreement was ready for signature but the contract was never finalised because the proposed guarantor was unable to agree terms. He objected to some of the clauses in the draft agreement and despite some concessions by the Respondent declined to accept their terms.
8. Other sources were investigated by the Applicants in order to secure an acceptable guarantor but were not successful and they felt they had little choice but to withdraw from the proposed agreement and seek an alternative property.
9. They informed the Respondent of their decision (email dated 21 October 2021 page RB5/13) and asked for the return of their deposit which the Respondent declined to repay.
10. The Applicants state that they asked the Respondent for reasons why the deposit was not returned and received no response. The Respondent however relies on an email (page RB6/14) which they say was sent on the date shown on the email and which they aver complies with their current statutory obligations.
11. The Applicants' case is that they filed an application with the Tribunal for the return of their deposit on the grounds that the transaction was aborted by the Respondent who had included unacceptable terms within the proposed tenancy agreement which meant that they could not proceed and /or that they are entitled to recover their deposit because the Respondent has failed after receiving a written request to do so, to provide reasons for their withholding the deposit.
12. The Tenant Fees Act 2019 sets out the circumstances in which a preliminary deposit is repayable to the tenants and it specifically provides (inter alia) that a prospective tenant is entitled to the return of the preliminary deposit in either of the circumstances pleaded by the Applicants above (paragraph 11) , subject in either case to reasonable proof of the ground.
13. In the present case the Tribunal does not accept that the contract was terminated by the Respondent. The Respondent is entitled to require and obtain security for the rent payable (a guarantor) and, subject to the general law and negotiation, is entitled to set the terms on which it is prepared to let the property. While some of the terms in the proposed agreement appear to be more widely drafted than is customary, none is illegal or prohibited or unduly harsh. It is unfortunate that the Applicants' chosen guarantor did not feel able to undertake the responsibility despite some concessions being made by the Respondent. However, it is clear from the sequence of events that the decision to end the negotiations emanated from the Applicants and not the Respondent. The cause of the break was of their making and not the Respondent's and thus they do not qualify for the return

of their deposit on that particular ground. The Applicants' assertion that they are entitled to the return of their deposit in circumstances where they have attempted but failed to reach an agreement is regrettably misconceived. The wording of the statute only applies to a wrongful withdrawal by the landlord or its representative.

14. However, the Tribunal does not accept the Respondent's contention that the Applicants had not taken reasonable steps to complete the agreement. The Tribunal is satisfied that once the Applicants realised that their chosen guarantor would not proceed they did take appropriate steps to seek alternative security and only withdrew when it appeared to them that they would be unable to satisfy the Respondent's requirements.
15. A further statutory ground for the refund of the deposit is where the tenants have asked the landlord in writing for the reasons why the landlord declines to repay the deposit and the landlord fails to respond within 7 days.
16. In the present case the Applicants say that they made such a request on 24 December 2021 (page A12) and received no response to that request.
17. The Respondent has not denied that such a request was made by the Applicants but avers that their statutory duty was satisfied by their email to their Applicants dated 25 October 2021 (page RB6 /14).
18. The Applicants assert that they did not receive this this email (page RB6/14) and had not seen it until the Respondent disclosed it within their documents for the present proceedings. They assert that the Respondent's email chain is incomplete and that this particular email is not genuine and was fabricated for the purpose of these proceedings. They point to the fact that the typeface/font on the disputed email is inconsistent with the style used in other emails (see e.g. RB4/12) from the Respondent and that it is dated shortly after the Applicants had emailed the Respondent to indicate that they were still interested in acquiring a property from them.
19. The Applicants also point to the fact that the disputed email has inconsistencies in its address line and is the only email in the sequence which is sent to Mr Motwan alone and not sent jointly to both prospective tenants.
20. In the Respondent's disputed email of 25 October they say that they are withholding the deposit because the Applicants had not done everything they could to sign the agreement. This is the only reason given for the failure to return the deposit and does not appear to accord with the factual situation where the Applicants' email to the Respondent of the previous Friday had indicated that they were still interested in acquiring a property from the Respondent.

21. Irrespective of the validity or otherwise of the disputed email of 25 October 2021 the Tribunal finds the reason for withholding the deposit expressed in this email under discussion is inadequate and inaccurate and cannot justify the Respondent's actions of withholding the deposit which is contrary to the statutory provisions.
22. Further, if the email of 25 October 2021 was sent at the purported time, on receipt of the Applicants' request for reasons dated 24 December 2021, the Respondent could have responded to the Applicants by saying that reasons had already been given and enclosing a copy of their earlier email. The Applicants say this was not done and the Respondent has not produced evidence to the contrary.
23. The Tribunal was not asked to inspect the property and in the context of the issues before it did not consider that an inspection of the property would be either necessary or proportionate.
24. For the above reasons the Tribunal finds the Applicants' case proved and orders the Respondent to repay to them jointly and severally the full amount of the holding deposit (£346.15).

25. The Law

Tenant Fees Act 2019

15 Recovery by relevant person of amount paid

(1) Subsection 3 applies where—

(a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and

(b) all or part of the prohibited payment has not been repaid to the relevant person.

(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.

(4) Subsection 3 applies where—

(a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and

(b) the relevant person has made a payment or payments under the contract.

(5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.

(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 2 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.

Judge F J Silverman as Chairman
Date 27 June 2022
Revision 28 June 2022

Note:
Appeals

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 rplondon@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.