



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

**Case reference** : **LON/00AH/HTC/2022/0006**

**Property** : **42 Gloucester Place, London W1U 8HF**

**Applicant** : **Nay Myo Htet**

**Respondent** : **Amber Residence**

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

**Tribunal** : **Judge Dutton**

**Date of Decision** : **26 July 2022**

**DECISION**

The tribunal determines that the holding deposit of £660 is repayable under the provisions of the Tenants Fees Act 2019 (the Act) for the reasons set out below. The deposit should be repaid to the Applicant within 28 days

**Background**

1. On 19 January 2022 the Applicant paid to the Respondent a holding deposit of £660 in respect of a one bed studio flat at 42 Gloucester Place London W1U 8UF (the Property). In the Respondent's bundle is a copy of a receipt dated 19 January 2022 for this amount indicating that it was a deposit for the period 21 January to 21 April 2022.
2. The Applicant cancelled the letting on 20 January 2022 due to family issues and intended to return home. He says that at no time was he provided with the cancellation policy. The Respondent says that at the time of the payment of the deposit he was informed that a cancellation could not be made. It is said by the Respondent that consideration was given to a partial refund but that the Applicant had 'lied' about his circumstances and had in fact taken a booking elsewhere.

3. It is said by the Respondent that the letting was for a hotel room and did not fall within the terms of the Act (presumably this being a reference to the exclusion from the Act of “a licence to occupy housing the purpose of which is to confer on the tenant the right to occupy housing for a holiday”: see section 28).
4. The Applicant says that he paid the deposit as he was told by staff that if he did not do so they would let the studio to others. Apparently, this was the Applicant’s first time he had tried to rent a property. He says he asked about getting the deposit back and if he could not, he would have arranged for a friend from China to take over the letting. His enquiry resulted in a response from the Respondent indicating, so the Applicant believed, that the matter would be dealt within two weeks. It was not and instead on 11 February 2022 the Respondents texted the Applicant stating they were unable to refund “in line with our terms and conditions”. The Applicant says he has never seen the terms and conditions.
5. In the bundle submitted by the Respondent there a number of copy advertisements about the hotel known as Amber Residence Hotel and Amber Residence Aparthotel. There are copies of advertisements with Booking.com, Expedia and Hotels.com. Under a document headed ‘House Rules’ it says that cancellation arrangements vary according to accommodation type, but no further details seem to be given. There is also an entry saying that a deposit may be required for incidental charges. The Property itself is described as a “1 Bed Studio Flat”.
6. At exhibit EV5 when viewing the Property, the description under ‘Viewing Request’ under availability indicates a ‘minimum tenancy’ of one month and a ‘maximum tenancy’ of 3 months. In addition, the Property is advertised with ensuite facilities, private kitchen with cooker, refrigerator, crockery and cutlery. It is noted however that at EV5 a four-month rental seems to be acceptable to the Respondent.
7. From EV8 onwards, the prospective tenants of the studio flat do not appear to be holiday makers. At EV8, the enquiry is from a student; at EV9, the enquiry is from someone who is “looking to move ... in the next couple of weeks”; at EV10, the enquiry is from “a professional looking for a studio”; and no indication is given regarding the enquiries at EV11 and EV12.
8. At EV15 is a copy of the receipt for the holding deposit. Although this is headed up “Amber Residence Hotel”, at the bottom of the receipt the Respondent company’s details are given as “Amber Residential Property Ltd T/A Amber Residence Hotel”.

### **Findings**

9. The application is made under section 15(3) and (5) of the Act seeking repayment of the holding deposit of £660. The relevant terms of the Act are set out below. A relevant person means a “tenant”, but a tenant can include a licensee under a licence to occupy housing, which is further defined under the

Act as being a building or part of a building, occupied or intended to be occupied as a dwelling.

10. I need to be satisfied that the parties are landlord and tenant, considering the extended definition of tenant.
11. Taking into account all that is said by the Applicant and the Respondent and in particular the evidence supplied by the Respondent as to the terms of any letting, where the phrase “tenancy” is used (see para 6 above), the fact that none of the prospective tenants appear to be interested in renting the studio flat for the purpose of a “holiday” per section 28 of the Act (see para 7 above) and that the Respondent is named as a residential property company, albeit “trading as” a hotel (para 8 above), I have come to the conclusion of the balance of probability that the arrangement between the Applicant and the Respondent was one of landlord and tenant/licensee and that therefore the provisions of the Act apply.
12. However, I must bear in mind that it was the Applicant who cancelled the tenancy and accordingly I need to consider Schedule 2 of the Act relating to the treatment of a holding deposit. I should say that it seems to me that the deposit breaches the First Schedule paragraph 3(c) of the Act, in that it is more than one week’s rent, which would be £330, based on an annual rent of £17,160. However, that is not of relevance given my findings that the landlord has fallen foul of paragraph 5(1) of the Second Schedule to the Act. This requires the person holding the deposit to repay it if paragraphs 8 – 12 apply and they have not given the person who paid the deposit (the Applicant) an explanation in writing within the relevant period as to why the deposit is not to be repaid. The relevant period being 7 seven days beginning with the deadline for the agreement, which I conclude was 21 January 2022 being shown as the start date on the receipt referred to above.
13. Under paragraph 10 it provides that paragraph 3(c) does not apply if the tenant notifies the landlord before the deadline that he has decided not to enter into the tenancy agreement. In this case the receipt clearly states that the letting is start from 21 January 2022. It is accepted by all concerned that the Applicant cancelled the letting the day before. Accordingly, whilst the Applicant does not have the benefit of paragraph 3(c), because paragraph 10 applies, I find the Respondent is caught by paragraph 5(1)( a) and (b) in failing to provide the Applicant with the relevant explanation as to why the deposit is not being repaid.
14. Accordingly, I find that the Applicant is entitled to the refund of his deposit in the sum of £660, such sum to be repaid within 28 days.

Judge Dutton

26 July 2022

Extracts from the Act

## **Schedule 2**

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.

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.

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.

## **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.