FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference HMCTS Code	**:**	**CAM/38UC/HTC/2022/0003 P:PAPERREMOTE**
Property	**:**	**15 Peel Place, Oxford, OX1 4UT**
Applicant	**:**	**Stephanie Haynes**
Respondent	**:**	**Mark Rawlins T/A Letting 4 Oxford**
Type of application	**:**	**For recovery of all or part of a prohibited payment or holding deposit: Tenant Fees Act 2019**
Tribunal	**:**	**Judge Wayte**
Date	**:**	**17 August 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 all issues could be determined on paper. In accordance with the directions, I have considered the application and supporting documents, a subsequent email from the applicant and the tenancy agreement. The respondent took no part in the proceedings.

The tribunal's decision is that the respondent must pay the applicant £111.60 within 14 days.

The application and determination

1. This is an application for an order for the recovery of a prohibited payment paid in respect of a tenancy of 15 Peel Place, Oxford OX1 4UT, pursuant to section 15 of the Tenant Fees Act 2019 ("the 2019 Act").

2. The application form and supporting documents confirm that on 1 April 2022 the respondent received payment of £170 from the applicant in respect of early vacation, the applicant having found a replacement tenant to take her place. Under paragraph 6 of Schedule 1 to the 2019 Act, a payment to a letting agent in consideration of arranging a variation of a tenancy at the tenant's request is a permitted payment provided that the payment does not exceed the reasonable costs of the agent.

3. The applicant argues that a maximum of £50 (as indicated in paragraph 6(2)(a) of Schedule 1) should have been charged and therefore the amount of the excess is a prohibited payment within the meaning of the Tenant Fees Act 2019. If so, the tribunal would be empowered to order recovery of all or part of that amount from the respondent.

4. The tribunal gave directions on 4 July 2022 providing for the matter to be determined on the papers unless either party made a request for a hearing or the tribunal, having reviewed the papers, considered that a hearing was required. No request was made and I did not consider a hearing was necessary to determine the issue fairly and justly, particularly in view of the amount in issue.

The law

5. As stated above, Schedule 1 to the Tenants Fees Act 2019 ("the 2019 Act") contains a list of permitted payments, paragraph 6 deals with payment on variation, assignment or novation of a tenancy and states:

> *6 (1) A payment is a permitted payment if it is a payment-*
> *(a) to a landlord in consideration of the variation, assignment or novation of a tenancy at the tenant's request, or*
> *(b) to a letting agent is consideration of arranging the variation, assignment or novation of a tenancy at the tenant's request.*
>
> *(2) But if the amount of the payment exceeds the greater of-*
> *(a) £50, or*
> *(b) the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy,*
>
> *the amount of the excess is a prohibited payment.*

6. Section 15 of the 2019 Act states that the relevant person may make an application to the First-tier Tribunal for the recovery from the landlord

or letting agent of any prohibited payment. Section 15(9) states that on an application the Tribunal may order the landlord or letting agent to pay all or any part of the amount to the relevant person within the period specified in the order.

The applicant's case

7. The applicant stated in her application that she entered into a 12 month joint assured shorthold tenancy in September 2021. In or about March 2020 she arranged for someone to replace her and once he passed the credit check she agreed a move-in date of 5 April 2022.

8. On 30 March 2022 the respondent emailed the applicant saying that he required £170 in respect of their fee for the change to the tenancy; made up of £50 for a change to the tenancy documentation, £50 for changes to DPS certification, £23.40 plus VAT for the credit checks and agency costs at £35 per hour plus VAT. The fee would need to be paid before the applicant could be checked out and the new tenant checked in.

9. The applicant responded that she was surprised by the fees, particularly considering the recent legislation. However, she was keen to avoid problems with her deposit and therefore made the payment on 1 April 2022. The change to the tenancy took place on 5 April 2022 as agreed.

10. In her application form, the applicant said that she had rung the respondent to query the fee and ask what costs he had incurred to justify the amount. The only cost she was aware of was £23.40 plus VAT for the credit check. She stated that the respondent pointed to clause 5.13 in the tenancy agreement. When she said that such a clause was void under the 2019 Act, the respondent said that she would be held to the end of her contract. She therefore felt she had no option but to pay the fee and, following the respondent's refusal to repay some of the monies, issue her application.

The respondent's case

11. The respondent took no part in the proceedings, despite being sent the application and directions on 6 July 2022 and a further email on 1 August 2022.

12. Clause 5.13 of the tenancy agreement set out the costs for a new tenant found by the vacating tenant as follows: "*You will be charged the Landlord Expenses for the new tenant and Guarantor costs for referencing and immigration checks £23.40 per person. All administration, Novation, variation costs to changes to the tenancy documentation £50. Changes to the security deposit and re-issue of the Security Deposit certification and re-issue of all utility certificates and ancillary documents to all tenants in the property charged at the rate of £35 per hour*". This is obviously slightly different to the

explanation for the costs given in the respondent's email described at paragraph 8 above.

The tribunal's decision

13. As stated above, if the respondent can show that their reasonable costs of arranging the sublet were £170, it would be a permitted payment under the 2019 Act. However, given that they failed to respond to the application, the only evidence of the steps taken is in the tenancy agreement and the email dated 30 March 2022, with no clear statement of the actual time those steps require. Where there is any conflict between the two documents, I prefer the tenancy agreement which was signed by both parties.

14. The Guidance on the 2019 Act for landlords and agents is clear that if a tenant has found a suitable replacement tenant, it is unlikely that a fee above £50 can be justified and that any costs above that amount should be evidenced. The applicant accepts the cost of the credit checks at £23.40 and I consider that 1 hour at £35 per hour would be ample to go through the steps set out in the tenancy agreement and email. A set fee of £50 for re-issuing the contract is not acceptable. In the circumstances I consider that the permitted payment in this case is £58.40 including VAT (I note there is no reference on the tenancy agreement to VAT). This means that the respondent must return £111.60 to the applicant.

Judge Ruth Wayte **17 August 2022**

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).