



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>LON/00AH/HTC/2022/0009</b>
<b>Property</b>	:	<b>10 Fulwood Gardens, Twickenham, London TW1 1EN</b>
<b>Applicants</b>	:	<b>Kayley Marie Watkins and Jack David Partridge</b>
<b>Respondent</b>	:	<b>Chase Buchanan Ltd. as agent for the landlord, Anthony Joseph Thomas Hogg</b>
<b>Application</b>	:	<b>To recover all or part of an alleged prohibited payment (Tenant Fees Act 2019)</b>
<b>The Tribunal</b>	:	<b>Judge Edgington</b>

---

**DECISION**

---

Crown Copyright ©

1. The only prohibited amount within the sums paid by the Applicants on premature termination of their assured shorthold tenancy of the property on the 3<sup>rd</sup> February 2022, is a letting agent's fee of £145.00 and this sum must be paid back to the Applicants within the next 28 days.

**Reasons**

**Introduction**

2. I have not inspected the property but see, from Google Earth, that it is in a semi-detached house in a cul-de-sac of similar houses in Twickenham.
3. The Applicants entered into an assured shorthold tenancy agreement with Mr. Hogg for an initial period of one year commencing on the 2<sup>nd</sup> December 2021 "*and thereafter from month to month*". The rental was £1,950.00 per calendar month.
4. Shortly after this the Applicants asked the landlord whether they could terminate that agreement early. The landlord agreed to that and a Deed of Tenancy Surrender was signed by the Applicants on the 1<sup>st</sup> February 2022 and by the landlord on the 2<sup>nd</sup> February. It became operative on the 3<sup>rd</sup> February and it was agreed that £2,270.00 would be the compensation. That sum was paid, largely by the deposit being retained.
5. The **Tenant Fees Act 2019** ("the 2019 Act") was passed with the express intention of preventing landlords from obtaining excess monies by way of fees

and rent from tenants in this sort of situation. As it is primary legislation, it overrides any Deed of Tenancy Surrender even though the terms may have been 'agreed' at the time.

6. The landlord was able to re-let the property to another tenant as from the 4<sup>th</sup> February 2022 but at a slightly reduced rent of £1,800.00 per calendar month for the remainder of the initial fixed term.

### **The Monies Paid**

7. The amount recovered from the Applicants was £2,270.00 made up as follows:

Loss of rent (10 x £150.00 per month)	1,500.00
Landlord's agents fee for setting up a new tenancy	420.00
Inventory check out fee	145.00
Inventory check in fee	145.00
Deposit registration fee	<u>60.00</u>
	2,270.00

8. The Applicants allege that this is not a permitted payment under Schedule 1 of the 2019 Act and seek a recovery order. They refer to another First-tier Tribunal decision where one of a number of tenants was replaced. The Respondent says that the amounts are reasonable and are within the permitted payments under the 2019 Act. They also say that the case referred to by the Applicants is not relevant. As a matter of law, of course, this Tribunal is not bound to follow another First-tier Tribunal's decision.

### **The Law**

9. Under the old law, a landlord would, in theory, be able to simply refuse to accept a surrender of a fixed term agreement as both parties would be contractually bound to complete it. In this case, the Applicants would therefore have had to either complete the term or pay 10 month's rent up to the end of the initial fixed term i.e. £19,500.00.
10. Where a tenant needed to terminate a tenancy early, some unscrupulous landlords would take advantage of the situation and agree to an early termination upon payment of 'damages' which were often grossly exaggerated. The landlord would then re-let the property and make a large profit.
11. As the Applicants' suggest, Schedule 1 of the 2019 Act sets out which payments are now 'permitted' under the Act in this sort of situation and this Tribunal has the power to order repayment of prohibited amounts.
12. As far as rent is concerned, Schedule 1 says that "*a payment of rent under a tenancy is a permitted payment*". There are restrictions on claiming a higher rent for a later period but that is not relevant in this case as the landlord has only claimed the amount of rent he has actually lost.
13. The Applicants claim that the rental market in London has been 'extremely vibrant in the last 12 months'. The Respondent says that it did the best it could to get a tenant quickly but January is renowned for being a quiet month for the rental industry and out of 10 people who wanted viewings, only 6 turned up and only one wanted to proceed.

14. As far as fees are concerned, paragraph 7 of the First Schedule is headed “Payment on termination of a tenancy” and says that “*a payment is a permitted payment if it is a payment to a letting agent in consideration of arranging the termination of a tenancy ... but if the amount of the payment exceeds the reasonable costs of the letting agent in respect of the termination of the tenancy, the amount of the excess is a prohibited payment*”.
15. Paragraph 6 is headed “Payment on variation, assignment or novation of a tenancy”. Once again, a reasonable fee paid to a letting agent is a permitted payment. A novation of a tenancy is where parties agree to extinguish a tenancy and replace it with a new contract where one of the original contracting parties is replaced by a third party who takes up the rights and obligations afforded to the original contractor.
16. Although the rent in the new contract is slightly less than the old one in this case, I take the view that the new tenancy in this case is a novation within the terms of paragraph 6 of the First Schedule to the 2019 Act and, thus, the fees incurred in obtaining the new tenant are permitted provided they are reasonable.

### **The Decision**

17. I consider that the monies obtained from the Applicants come within the definition of ‘permitted payments’ if they are reasonable. The rent claimed is reasonable. If the landlord or his letting agent had been able to get more rent for the property, then I am sure that they would have done so.
18. With regard to the fees claimed, as with any First-tier Tribunal member in the Property Chamber, I have much experience over many years of assessing whether estate agents’ fees or letting agents’ fees are reasonable. In this case, the fees claimed are, in my view, reasonable except for the fees claimed for check out and check in. Those 2 processes in this case were undertaken on following days i.e. termination of the subject tenancy was on the 3<sup>rd</sup> February and the new tenancy commenced on the 4<sup>th</sup> February 2022.
19. Thus, the check out and check in reports and assessment of the condition of the property should have been undertaken at the same time. I therefore do not allow one of the fees of £145.00



.....  
**Judge Edgington**  
**13<sup>th</sup> September 2022**

### **ANNEX - RIGHTS OF APPEAL**

- i. 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 [London.RAP@justice.gov.uk](mailto:London.RAP@justice.gov.uk) to the First-tier Tribunal at the

Regional office which has been dealing with the case.

- ii. 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.
- iii. 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.
- iv. 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.