



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

Case reference : **LON/00AB/HTC/2022/0005P**

Property : **11th Floor Oculus House, 16-48
Cambridge Road, Barking, Essex
IG11 8SJ**

Applicant : **Hanzhe Guo**

Respondent : **Mr C Sun**

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

Tribunal members : **Judge P Korn
Mrs A Flynn MRICS**

Date of decision : **24 October 2022**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that they would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal orders the Respondent to repay to the Applicant the whole of the £500.00 holding deposit within 7 days from the date of this decision.

The application

1. Pursuant to section 15 of the Tenant Fees Act 2019 (“**the 2019 Act**”), the Applicant seeks the return of part or the whole of a holding deposit paid to the Respondent in connection with a prospective tenancy of the Property. The amount of the holding deposit was £500.00.

Applicant’s case

2. The Applicant states that the Respondent was offering to rent out one room at the Property for £1,050.00 per month. The Applicant agreed to rent it from the Respondent for 2 months from 1 April 2022. The Respondent asked the Applicant to pay a holding deposit of £500.00, and the Applicant duly paid this holding deposit by bank transfer.
3. On 23 March 2022 the Applicant then told the Respondent that because his flight ticket time had changed he might only need to rent the room for a month. The Respondent did not agree to this and also refused to return the holding deposit. The Applicant then told the Respondent that the legal cap on holding deposits was one week’s rent, whereupon – according to the Applicant – the Respondent “*threatened to bully and destroy me on social media if I sue him*”.
4. The Applicant adds as follows: “*on 28 March I took further steps trying to enter into agreement with him, but he rejected to let me move into his room at the due date, and did not pay back my holding deposit either. Through out the process no written contract has been signed*”.
5. The Applicant has provided evidence of payment of £500.00 by way of holding deposit, and this evidence has not been challenged by the Respondent.

Respondent’s case

6. The Respondent has not made any submissions.

Tribunal’s analysis

7. Section 15 of the 2019 Act provides 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.

8. Under paragraph 3(3) of Schedule 1 to the 2019 Act, if the amount of a holding deposit exceeds one week's rent the amount of the excess is a "prohibited payment". In the present case the agreed rent was £1,050 per month, which equates to £242.00 per week. Therefore, the maximum permitted payment was £242.00 per week. We are satisfied on the basis of the evidence before us that the Applicant paid £500.00 by way of holding deposit, and it follows that the difference between £500.00 and £242.00, namely £258.00, constitutes a "prohibited payment" under paragraph 3(3) of Schedule 1.
9. We now turn to the question of whether the remainder of the holding deposit (i.e. the remaining £242.00) also constitutes a payment that the Respondent is required to repay.
10. Section 15(2) of the 2019 Act states: "*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*". The relevant part of section 15(3) then states: "*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 ... holding deposit has been repaid to the relevant person, the amount of the ... holding deposit ...*".
11. Therefore, in addition to "prohibited payments" section 15 also applies to the status of holding deposits where there has been a breach of the provisions of Schedule 2 to the 2019 Act. It is therefore necessary to consider the relevant parts of Schedule 2 to the 2019 Act in order to determine whether the Respondent is in breach of any of its provisions. The relevant parts of Schedule 2 are as follows:-
 - 2(1) *In this Schedule "the deadline for agreement" means the fifteenth day of the period beginning with the day on which the landlord ... receives the 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.
- 6 Paragraph 3(a) does not apply if or to the extent that the amount of deposit is applied, with the consent of the person by who 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.
- 10 Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord ... 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 ...
 (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 13 Paragraph 10 [or] 11 ... does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—
 (a) the landlord ... 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 ... 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.
12. Subject to the exceptions set out in a later part in Schedule 2, under paragraph 3 of Schedule 2 the holding deposit must be repaid 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”.

13. It is clear on the evidence before us that the holding deposit was not repaid before the “deadline for agreement” (as defined in paragraph 2(1) of Schedule 2) or at all. As to whether the parties entered into a tenancy agreement, the evidence indicates that no written tenancy agreement was entered into, although it is just about possible (albeit unlikely) that an oral tenancy agreement existed. If an oral agreement **was** entered into and if therefore paragraph 3(a) above applies, the holding deposit must be repaid unless the exception in paragraph 6 applies.
14. Paragraph 6 states that *“Paragraph 3(a) does not apply if or to the extent that the amount of deposit is applied, with the consent of the person by who 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”*. The evidence before us indicates that the holding deposit was not applied towards the first payment of rent or towards a tenancy deposit with the consent of the Applicant, and therefore the exception in paragraph 6 does not apply.
15. Turning now to the other exceptions set out in Schedule 2, two exceptions are contained in paragraphs 10 and 11 respectively, which are then in turn both limited in scope by paragraph 13.
16. Under paragraph 10, *“Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord ... before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement”*. Under paragraph 11, *“Subject to paragraph 13, paragraph 3(c) does not apply ... if the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and ... the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date”*.
17. Whilst it is at least arguable that both paragraph 10 and paragraph 11 do apply (subject to paragraph 13(a)) on the facts of this case as very briefly presented to us, paragraph 13(a) disapplies the exceptions contained in both of those paragraphs where the landlord is in breach of section 1 of the 2019 Act. Under section 1(1) of the 2019 Act *“a landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England”*. Section 1(9) of the 2019 Act defines “relevant person” as including a tenant. As we have already established that at least part of the holding deposit constituted a “prohibited payment” because it exceeded one week’s rent, it follows that the exceptions in paragraphs 10 and 11 do not apply here.
18. Having considered the remainder of the exceptions contained in Schedule 2 we are satisfied that none of these applies on the facts of this case.

19. To summarise, on the basis of the evidence before us and for the reasons stated above, it is clear that £258.00 out of the total holding deposit of £500.00 constitutes a prohibited payment under paragraph 3(3) of Schedule 1 to the 2019 Act and must be repaid to the Applicant.
20. In addition, the Respondent must also repay the remaining £242.00 to the Applicant. This is because this sum, and indeed the whole of the holding deposit, constitutes a payment falling within paragraph 3 of Schedule 2 to the 2019 Act and must therefore be repaid unless an exception applies. For the reasons stated above, we are satisfied that none of the exceptions applies on the facts of this case.
21. Accordingly, the Respondent is required to repay the whole of the holding deposit to the Applicant.

Name: Judge P Korn

Date: 24 October 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.