



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

Case reference : **LON/00BK/HTC/2022/0020**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Studio 8, 59 Princes Square, London W2
4PX**

Applicant : **Charlotte de Nyary Comandini**

Representative : **-**

Respondent : **Bartlett Group**

Representative : **-**

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

**Tribunal
member(s)** : **Judge D Brandler**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **17th January 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal determines that the respondent must repay the sum of £255.00 to the applicant in respect of the holding deposit retained by th
 - (2) em. That amount to be repaid to the applicant within 28 days.
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Background

1. On 02/03/2022 Charlotte de Nyary Comandini (“the applicant”) entered into a contract with the Bartlett Group (“the respondent”) for an assured shorthold tenancy of Studio 8, 59 Princes Square, London W2 4PX (“the property”). The tenancy was to commence on 09/03/2022.
2. The tenancy agreement states the Rent to be:

“Rent £1105 nevertheless as hereinafter provided) for every Months (subject of the Term) Payable £1040 in advance by equal Monthly payments” (sic)
3. The applicant paid a holding deposit of £255 on 02/03/2022.
4. The respondent told the applicant that she could either pay six months’ rent in advance and a one-month deposit, or she could use the service of Guarantid at a cost to her of £269. She chose to use Guarantid.
5. Guarantid required documents to be provided on their web platform, however the applicant experienced technical issues on their platform which meant that she could not upload certain documents until 10/03/2022. She had made attempts to comply with the requirements on 08/03/2022 and 09/03/2022.
6. On 10/03/2022 the issues were resolved and the applicant was able to upload the documents, however the start date of the tenancy had passed and the applicant tried to contact both Guarantid and the respondent daily from that date until 12/03/2022 to try to agree a new start date. She did not want to be responsible to pay rent for days she had not been permitted the respondent to occupy the property.
7. On 11/03/2022 Guarantid responded to the applicant admitting their responsibility in the matter and offering to talk to the respondent on her behalf
8. The applicant made further attempts contact the respondent and Guarantid on 12/03/2022 and 14/03/2022. On 15/03/2022 the respondent offered to change the start date to 12/03/2022. They further rejected the applicant’s offer to start the tenancy on 15/03/2022 and refused to return the holding deposit.
9. An application dated 11/10/2022 was received by the tribunal and directions were issued on 17/11/2022.

The applicant's case

10. In her application, the applicant sets out details of her difficulties with Guarantid and the technical issues that delayed the Guarantee being provided to the respondent.
11. She reports various attempts to contact both Guarantid and the respondent by telephone and email to try to resolve matters. She objects to having to pay rent for a property which she was not permitted to occupy because of technical difficulties not of her making and tried to negotiate a later start date with the respondent, who refused.
12. She asks that the holding deposit of £255 be returned to her because through no fault of her own, the start date of the tenancy had passed without her having been able to occupy.
13. On 25/04/2022 the applicant wrote to the respondent asking for the holding deposit to be returned. No response appears to have been sent explaining the reasons for its retention.

The respondent's case

14. The respondent has not complied with directions. No response has been received. However, the tribunal has the benefit of the documentation provided by the applicant.
15. The tenancy agreement itself is unclear in relation to the contracted rent. It states "*Rent £1105 nevertheless as hereinafter provided) for every Months (subject of the Term) Payable £1040 in advance by equal Monthly payments*" (sic).
16. The terms and conditions attached to the agreement state the rent to be £1,105 per month, with a £200 deposit. Whilst the terms remain silent on holding deposit, it provides confirmation "*paid £255 (Payment on account is deducted from total amount but not refundable if you do not proceed)*" indicating that this was indeed a holding deposit.

The tribunal's decision and reasons

17. The tribunal finds that the sum of £255 paid by the applicant to the respondent was a holding deposit.
18. The contract was frustrated by the delay caused by Guarantid or the respondent making it impossible for the applicant to move into the property on 09/03/2022.
19. The applicant attempted to negotiate with the respondent for a new tenancy start date to 15/03/2022 to avoid her paying rent for days on

which she was not permitted by the respondent to occupy the property. The respondent refused.

20. By paragraph 3(c) of schedule 2 of the Tenant Fees Act 2019, the landlord and the tenant failed to enter the agreement due to the failures of the respondent and/or Guarantid. Accordingly, the holding deposit must be repaid (paragraphs 4 and 5).

21. The tribunal finds that the applicant is entitled to the return of the holding deposit in the sum of £255 to be repaid within 28 days.

Name: Judge D Brandler

Date: 17th January 2023

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).

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 (5) 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 1

Holding deposit

3(1) Subject to sub-paragraphs (3) to (6), a payment of a holding deposit is a permitted payment.

(2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).

(3) If the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment.

(4) In sub-paragraph (3) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

(5) A payment of a holding deposit is not a permitted payment if—

(a) the landlord or letting agent to whom the deposit was paid has previously received a holding deposit (“the earlier deposit”) in relation to the same housing,

(b) the landlord or letting agent has not repaid all or part of the earlier deposit, and

(c) none of paragraphs 6 to 12 of Schedule 2 have applied so as to permit the landlord or letting agent not to repay the earlier deposit or the part that has not been repaid.

(6) The reference in sub-paragraph (5)(a) to a landlord or letting agent receiving a holding deposit does not include the landlord or letting agent doing so before the coming into force of Schedule 2.

Schedule 2

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.