



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

Case reference : **LON/00AC/HTC/2022/0013**

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

Property : **120 Clitterhouse Road, London NW2
1DN**

Applicant : **Ewa Daszuta**

Respondent : **Muhammad Chowdhury**

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

**Tribunal
member(s)** : **Judge N Rushton KC**

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

Date of decision : **12 December 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to or not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents to which the tribunal were referred were contained in the application and attached documents as detailed below (no response having been received from the respondent), the contents of which have been considered by the tribunal.

Decision of the tribunal

- (1) The respondent, Mr Muhammad Chowdhury must **by 4pm on 23 December 2022** repay to the applicant Ms Ewa Daszuta the sum of **£300** which was paid to him by her as a holding deposit on 19 August 2022.

The application

1. The applicant, Ms Ewa Daszuta made an application to the tribunal dated 23 August 2022 for the repayment of a holding deposit of £300 which she paid to the respondent, Mr Muhammad Chowdhury, in respect of an intended tenancy of 120 Clitterhouse Road, London NW2 1DN ("**the Property**"), said to be a studio flat.
2. Ms Daszuta included with her application (a) a bank statement for her account showing a payment of £300 to Mr Muhammad Chowdhury on 19 August 2022; (b) a copy of a completed assured shorthold tenancy of the Property signed by both parties on 21 August 2022, for one year from that date at a rent of £1,280 per month ("**the AST**"; (c) an exchange of WhatsApp messages between Ms Daszuta and Mr Chowdhury between 19 and 21 August 2022; (d) an email from Ms Daszuta to Mr Chowdhury dated 21 August 2022 at 17.03 in which she requested the return of the holding deposit, saying that "*The tenancy did not go ahead because of personal reasons, I have to leave the UK [urgently]*".
3. Directions were issued by Tribunal Judge Aileen Hamilton-Farey on 11 November 2022. These provided among other things for the respondent, Mr Chowdhury to email the tribunal (copied to the applicant) a statement in reply explaining why he should not have to refund the amount claimed, together with copies of any documents relied on by him, by 25 November 2022.
4. No such reply has been received by the tribunal and no explanation for this failure has been received or request for any extension of time. The tribunal file includes a copy of the letter sent to Mr Chowdhury on 16 November 2022 enclosing the directions and advising him that the application would be determined on paper during the week of 12 December 2022. The address and email address both match the contact details for Mr Chowdhury provided on the AST.
5. The tribunal is accordingly satisfied on the information before it that Mr Chowdhury has been given a reasonable opportunity to respond to the application but has failed or chosen not to do so. The tribunal has therefore proceeded to determine the application on the basis of the applicant, Ms Daszuta's, representations and documents alone.

6. As provided in the directions, this was a paper determination, no party having requested an oral hearing, and the tribunal being satisfied that this is an application which is suitable for determination on paper.

The law

7. Section 1(1) of the Tenant Fees Act 2019 (“**the 2019 Act**”) provides that 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. By sub-section 1(9), “relevant person” means (among others) a tenant. By sub-section 28(1), “tenant” includes a person who proposes to be a tenant under a tenancy and “landlord” includes a person who proposes to become a landlord.
8. By section 3(1) of the 2019 Act, any payment is a prohibited payment unless it is a “permitted payment” as defined by Schedule 1 to the Act.
9. Paragraph 3 of Schedule 1 provides that, subject to sub-paragraphs (3) to (6) of that paragraph, a payment of a holding deposit is a permitted payment. Sub-paragraph 3(2) defines a holding deposit as follows:

“(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).”
10. Sub-paragraph 3(3) of Schedule 1 also provides that if the amount of the holding deposit exceeds one week’s rent, then the amount of the excess is a prohibited payment. Sub-paragraph 3(4) provides that one week’s rent shall be calculated as the annual rent payable immediately after the grant of the tenancy divided by 52.
11. The provisions for how a holding deposit must be dealt with if it is to qualify as a permitted payment are accordingly as set out in Schedule 2 to the 2019 Act.
12. Paragraph 3(a) of Schedule 2 provides that the person who received a holding deposit must repay it if the landlord and the tenant enter into a tenancy agreement (defined in s.28 of the 2019 Act as including an AST with a private landlord) relating to housing. In those circumstances, by paragraph 4 of Schedule 2, the holding deposit must be repaid within 7 days of the date of the tenancy agreement.
13. Paragraph 6 of Schedule 2 provides an exception to the obligation to repay the holding deposit where the parties have entered into a tenancy agreement if (and only if) the amount of the holding deposit is applied

with the consent of the person by whom it was paid towards either the first payment of rent under the AST or the tenancy deposit.

Findings of fact

14. It appears from the WhatsApp messages that the Property was advertised for rent by Mr Chowdhury on the “OpenRent” website and Ms Daszuta contacted him in response to that advertisement. By a message dated 19 August 2022 Mr Chowdhury requested payment into his bank account of what was described as “the holding deposit of £300”.
15. The copy of Ms Daszuta’s bank statement records a payment of £300 from her to Mr Chowdhury on 19 August 2022. The tribunal is accordingly satisfied that that payment was made by her and received by Mr Chowdhury and that it was intended to be a holding deposit under Schedule 2 of the 2019 Act.
16. It is also clear from the WhatsApp messages that the parties arranged to and did meet at the Property at about 11.30am on 19 August 2022, for Ms Daszuta to view the Property with a view to letting it. At 11.44 Mr Chowdhury sent a copy of the AST to Ms Daszuta by WhatsApp. At 11.47 he messaged her saying “*Hi Eva, I’ve just sent you the tenancy agreement. Please pay the remaining balance of £2260. Thanks.*”
17. However at 12.58 on the same day Ms Daszuta replied “*Hi Mo, I have already recently [received a] message from my family and I have to go to Poland and I don’t know when I am back so I can’t take this flat. I am really sorry. Can you pay my deposit back please?*” At 15.59, Mr Chowdhury replied that this was unfortunate and the holding deposit was not normally refundable. When Ms Daszuta threatened to “report him” if he did not return the holding deposit, he replied that it was not illegal for him to retain it as “*You have already signed the contract.*” Subsequently at 16.32 Ms Daszuta asked for half of the deposit back, and at 16.50 Mr Chowdhury said that if she provided evidence for what she said, she could have the full amount back. No further correspondence has been provided apart from Ms Daszuta’s email of 17.03 on the same day, demanding repayment of the £300 and asserting that he did not have a legal reason to keep the deposit.
18. The documents provided by Ms Daszuta include the AST signed by both her and Mr Chowdhury on 21 August 2022, which is probably what was sent by WhatsApp by Mr Chowdhury to Ms Daszuta at 11.44 on that day.
19. The tribunal is accordingly satisfied that Ms Daszuta entered into an AST to let the Property from Mr Chowdhury on 21 August 2022, at which point the first month’s rent of £1,280 apparently became payable (although the tribunal makes no finding about this). There is no reference however in the AST to any obligation to pay any tenancy

deposit and so no apparent justification for Mr Chowdhury's demand for a balance of £2,260 (apparently calculated as £1,280 first month's rent + £1,280 1 month's rent as a tenancy deposit, less £300).

20. Since the rent was £1,280 per month, one week's rent was £1,280 x 12 divided by 52, or £295.38. Therefore the difference between £295.38 and £300 (£4.62) was a prohibited payment under sub-paragraph 3(3) of Schedule 1 to the 2019 Act, being the excess over one week's rent.
21. The balance of £295.38 was a legitimate holding deposit, under Schedule 2 to the 2019 Act. However, by paragraph 3(a) of Schedule 2, that holding deposit became repayable by Mr Chowdhury to Ms Daszuta immediately they entered into the AST on 21 August 2022.
22. Although Mr Chowdhury purported to apply the £300 towards the first month's rent (and his demand for a tenancy deposit), to do this, Ms Daszuta would have had to have consented to it, as required by paragraph 6 of Schedule 2 to the 2019 Act. However, there is no evidence that Ms Daszuta gave any consent to the application of the holding deposit towards the rent. In particular, there is no statement within the AST that she consented to the use of her holding deposit in this way, nor did she give any consent within the WhatsApp messages which the tribunal has seen. Her next reply to being sent the AST was her message saying she wished to withdraw from the tenancy.
23. Accordingly, the tribunal finds, on the basis of the evidence before it, that Ms Daszuta did not consent to the application of the holding deposit towards the first month's rent.

Determination

24. Accordingly the tribunal determines that the whole payment of £300 is repayable by Mr Chowdhury to Ms Daszuta under the 2019 Act, (a) as to £295.38, under paragraph 3(a) of Schedule 2 to the 2019 Act and (b) as to £4.62, under paragraph 3(3) of Schedule 1 to the Act. In accordance with section 15(11) of the 2019 Act, the tribunal determines that the sum of £300 must be repaid by Mr Chowdhury by 4pm on 23 December 2022.

Name: Judge N Rushton KC

Date: 12 December 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).