



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

Case Reference : **MAN/00CH/HTC/2022/0004**

Property : **24, Wetheral Gardens, Low Fell NE9 6PY**

Applicant : **Ms Rebecca Roy**

Respondent : **Mr Stuart Wright**

Type of Application : **For recovery of a prohibited payment–
s15(3) and s15(5) of the Tenant Fees Act
2019**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member S Latham**

Date of Decision : **13 February 2023**

Date of Determination : **15 March 2023**

ORDER

ORDER

1. The Tribunal orders as follows:
 - (1) the additional payment of £800 paid by the Applicant to the Landlord in accordance with the special conditions of the tenancy agreement dated 2 September 2022 is a permitted payment of rent in accordance with paragraph 1 of Schedule 1 to the Tenant Fees Act 2019;
 - (2) the Applicant's application for recovery of the payment under sections 15(3) and (5) of the Tenant Fees Act 2019 is not granted accordingly;
 - (3) the Applicant's application for an order "debarring" the Respondent's wife/partner is dismissed.

BACKGROUND

1. By an application dated 3 December 2022, ("the Application") the Applicant applied under sections 15(3) and (5) of the Tenant Fees Act 2019, ("the Act"), for recovery of a payment of £800 made by the Applicant to the Respondent at the commencement of the tenancy as an alternative to the provision by the Applicant of a guarantor for the rent under the tenancy agreement.
2. Directions dated 4 January 2023 were issued and pursuant to which the Application was scheduled for determination on 13 February 2023.
3. The Tribunal has determined this matter upon consideration of the papers, namely, the Application and supporting documents and subsequent written representations from the Applicant and the Respondent. Having reviewed the parties' written submissions, the Tribunal is satisfied that it is appropriate to determine the Application without a hearing.

EVIDENCE

4. The Applicant's case is summarised as follows:
 - (1) the Applicant entered into a tenancy agreement in respect of the Property for a period of 12 months commencing on 2 September 2022 at a monthly rent of £800;
 - (2) the Applicant made a payment of £800 in respect of the rent payable from 2 September – 1 October and £800 by way of tenancy deposit;
 - (3) following discussions between the Applicant and the Respondent's letting agent, Belle Vue Properties, regarding the Respondent's requirement for the Applicant to provide a guarantor for the payment of rent and the Applicant's stated inability to do so, the Applicant offered and then made a further payment of £800;

- (4) the Applicant submits that she believed that this additional payment was an advance payment for the rent due on 2 October 2022;
 - (5) when the Respondent failed to apply this payment against the October rent payment, the Applicant challenged the legality of the additional payment under the terms of the Tenant Fees Act 2019, (“the Act”), on the ground that, as it was not a payment by way of rent (as was her understanding), it was not a “permitted payment” within Schedule 1 of the Act;
 - (6) the Applicant requested repayment of the payment by the Respondent but this was refused, and the Applicant brought the Application accordingly;
 - (7) the Applicant has also made a further application dated 10 January 2023 seeking an order prohibiting the Respondent’s wife/partner from participating in these proceedings.
5. The Respondent’s position is summarised as follows:
- (1) the Applicant was made aware before entry into the tenancy agreement of the requirement for there to be a guarantor for the rent;
 - (2) the additional payment of £800 was accepted by the Respondent as an alternative to a guarantor;
 - (3) the terms upon which the payment was made are set out in the special conditions of the Tenancy Agreement which states as follows:
 “It has been agreed between the landlord and tenants that they have paid 1 extra month’s rent s of £800. This will be held onto their rent account throughout the tenancy instead of providing a guarantor”;
 - (4) the Applicant failed to pay the rent for October and December 2022, paid £500 for November 2022 and £800 on 6 January 2023 for the January 2023 rent;
 - (5) as a result, there are arrears totalling £1900 and the Respondent has consulted solicitors about taking possession proceedings;
 - (6) it was the Respondent’s intention that the additional payment of £800 would be used to pay the rent for August 2023 being the final month of the fixed term tenancy.

LAW

6. The relevant provisions of the Act provide as follows:
- (o) Section 2(1): A letting agent must not require a relevant person to make a prohibited payment to the letting agent in connection with a tenancy of housing in England.
 - (1) Section 1(9): In this Act “relevant person” means –
 - (a) a tenant, or

- (b) subject to subsection (10), a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant.
- (2) Section 3(1): For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1.
- (3) Schedule 1 includes, as permitted payments, rent (paragraph 1).
- (4) The statutory guidance issued by the Government under the Act makes it clear that, where a tenant cannot provide a suitable guarantor, a landlord can ask a tenant to pay their rent in a lump sum but they should consider if this is necessary and affordable for the tenant. Further the landlord cannot charge any more in an up-front lump sum payment than would have been chargeable over the fixed-term of the tenancy.
- (5) Section 15(3) and (5) of the Act provides that application may be made by the relevant person to the Tribunal for the recovery of a prohibited payment where no or only partial repayment has been made by the landlord or letting agent.

REASONS

- 7. The statutory guidance issued pursuant to the Act is clear that, where a tenant has no suitable guarantor, a landlord is entitled to ask their tenant to pay their rent in a lump sum in advance, although the landlord should consider the extent to which this is necessary and affordable for the tenant.
- 8. In this case, the Respondent requested a payment equal to 1 month's rent.
- 9. The Tribunal is satisfied that the payment of £800 was an up-front payment of rent in circumstances where a suitable guarantor was not available.
- 10. It could be argued that an "up-front payment" in an amount less than the aggregate amount of the rent payable for the fixed term of the tenancy will be applied in payment of the rent first becoming due. The Tribunal notes that, in her submissions, the Applicant states that this was her understanding where she states that she had expected the payment to be used in settlement of the rent becoming due on 2 October 2022.
- 11. The Tribunal notes however that the special condition in the tenancy agreement expressly states that "the 1 extra month's rent....will be held on their rent account throughout the tenancy". This appears to be consistent with the Respondent's submission that it was his intention that the payment would be used to make payment of the rent becoming due in August 2023, the last month of the fixed term tenancy.
- 12. The Tribunal does not consider that the proposed timing of any application of the payment as rent affects its fundamental categorisation as rent and therefore as a permitted payment within paragraph 1 of Schedule 1 to the Act.

13. The Tribunal is satisfied accordingly that the additional payment of £800 is a payment of rent and therefore a permitted payment within paragraph 1 of Schedule 1 to the Act. The Applicant's application for repayment of the payment is therefore dismissed.
14. In the circumstances, the Tribunal considers that no further consideration of the Applicant's application for an order to "debar" the Respondent's wife/partner from taking any part in the proceedings is required and the application is dismissed accordingly.

Tribunal Judge C Wood

13 February 2023