



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

**Case Reference** : **MAN/00BU/HTC/2022/0002**

**Property** : **41 Delamere Place, 8 Moor Lane,  
Wythenshawe, M23 0QT**

**Applicant** : **Mr Philip Hobson**

**Respondent** : **Northwood (Sale) Ltd**

**Type of Application** : **Tenant Fees Act 2019: s. 15(3)**

**Tribunal Member** : **(Judge) Mr Phillip Barber**

**Date** : **31 March 2023**

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**DECISION AND REASONS**

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## DECISION

1. The Application is dismissed under section 15(3) and Schedule 2 of the Tenant Fees Act 2019 (“the Act”).

## REASONS

2. I have determined this matter upon consideration of the application form and supporting documents together with the written representations provided by the parties. The outcome does not depend upon disputed questions of fact, and I am satisfied that it is appropriate to determine the application without a hearing.
3. This is an application for return of a holding deposit in the sum of £161.53 paid by the Applicant in October 2021 in relation to a proposed tenancy of 41 Delamere Place, 8 Moor Lane, Wythenshawe, M23 0QT (“the Property”).
4. I do not need to rehearse the facts in any detail as I am sure both parties are well acquainted with them.
5. The Applicant expressed an interest in letting the Property at the start of October 2021. On the 07 October 2021 the Applicant indicated that he would “need to see a copy of the tenancy agreement before making payment” and a draft contract was sent on the 07 October 2021. He paid the holding deposit on the 08 October 2021, presumably after sight of the draft tenancy agreement. The parties agreed in email exchange that the tenancy would commence on the 03 November 2021, subject to those background checks. Subsequently, and following background checks, the Applicant was offered the tenancy and a request was made for him to pay his first month’s rent and a tenancy deposit, less the holding deposit which the parties had agreed would form part of the tenancy deposit (paragraph 6(6) of Schedule 2 of the Act). The balance was £1346.16 which was made up of £700 first months’ rent and the tenancy deposit balance of £646.16 (the tenancy deposit was £807.69 – 5 weeks’ rent).
6. However, at this point things went awry as the Applicant indicated by email on the 26 October 2021 that he would not pay the first months’ rent or tenancy deposit balance “without first signing the tenancy agreement” but the Respondent indicated that they would not issue the final version of tenancy agreement until after payment of rent and tenancy deposit. Attempts were made to break the impasse on the 26 and 27 October 2021 but the property was eventually re-advertised, and the agreement collapsed. The Applicant made a request for his holding deposit, but this has been refused with the result that this issue is now before the Tribunal.
7. I am sure both parties are aware of the applicable law.
8. Assuming that Northwood is landlord (even if agent it makes little difference) section 1 of the Act prevents what is called a “prohibited payment”. By section 3 of the Act, a payment is prohibited unless it is included in a list of “permitted payments” in Schedule 1 to the Act. So far as relevant, permitted payments include “rent”, “tenancy deposit” and “holding deposit”.

9. The sum of £161.53 is a holding deposit and the balancing payment of £646.16 is a tenancy deposit; £700 is rent. All payments are therefore permitted payments under section 1 and Schedule 1 of the Act.
10. By paragraph 3(c) of Schedule 2 the general rule is that a holding deposit is to be repaid if “the landlord and tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.”
11. The “deadline for agreement” is the period of 15 days following the receipt of the holding deposit or such other period as is agreed in writing (Paragraph 2, Schedule 2). In this case the parties agreed on the 07 October 2021 that the deadline for agreement would be the “move in date” – the date when the tenancy agreement would be signed, and the other formalities complied with. In an email at 10:12am on that date the Applicant’s application for tenancy was accepted and he was advised that the move in date would be the date when the agreement is signed. A move in date of the 01 November 2021 was proposed but the Applicant asked that the date could be put back to the 03 November 2021. It follows that the “deadline for agreement” was the 03 November 2021.
12. The reason why the Applicant and Respondent did not complete the agreement by the deadline, is because negotiations broke down over the request that the Applicant pay the first month’s rent and the tenancy deposit balance before signing the agreement.
13. The presumption under paragraph 3(c) of Schedule 2 is that the holding deposit will be repaid unless one of the exceptions in paragraphs 8 through to 12 of Schedule 2 apply. Paragraph 11 applies where the landlord has taken all reasonable steps to enter into a tenancy agreement, whereas the tenant fails to take all reasonable steps to enter into a tenancy agreement.
14. By paragraph 13 of Schedule 2, paragraph 11 cannot be an exception where the landlord requires a prohibited payment under section 1 of the Act or behaves in a way which would make it unreasonable for the tenant to enter into a tenancy agreement.
15. The payment of rent and tenancy deposit are permitted payments so not caught by paragraph 13(a) and the request to pay them, given the facts of this application, is not, in my judgement, “unreasonable behaviour” which would be caught by paragraph 13(b) for the following reasons.
16. The requirement to pay a holding deposit is obviously a first step in the process of renting a property and demonstrates commitment by the tenant. The requirement to pay the first month’s rent and/or a tenancy deposit represents a commitment by both the tenant and the landlord and ensures that a tenancy agreement will be entered into. Payment is designed to create legal relations and represents the next step in the process of entering into a formal written tenancy agreement.
17. I am sure that the time and cost of setting up a tenancy on the part of either a landlord or letting agent is not insignificant. There is a great deal of paperwork and formalities which must be complied with to ensure that an

assured shorthold tenancy properly complies with the law. There is, for example, a list of prescribed information which is required to be provided under section 21B of the Housing Act 1988 and it seems to me to be perfectly reasonable for a prospective landlord to require a prospective tenant to pay rent and a tenancy deposit as security for the cost of finalising the tenancy agreement and collating the documents. The payment also creates a legally binding relationship between the parties. Paragraph 13 is accordingly inapplicable.

18. Insofar as paragraph 11 is concerned, I cannot see anything from the facts of this application which might suggest that the landlord has not taken all reasonable steps to enter into a tenancy agreement before the deadline for agreement so that paragraph 11(a) is not made out. In my view they were ready to enter into the agreement, subject to the balancing payment and a date had been set for moving in.
19. Paragraph 11(c) applies when the “tenant fails to take all reasonable steps to enter into a tenancy agreement...”.
20. Ultimately, therefore this application turns on whether the Applicant has failed to take all reasonable steps to enter into a tenancy agreement by his refusal to pay rent and the balance of the tenancy deposit before signing the tenancy agreement. I think the answer to that is yes, ostensibly for the reasons set out in paragraphs 16 and 17 above.
21. Neither of the payments are prohibited payments. Payment is quite clearly designed to provide a substantial degree of relative protection for both the prospective landlord and the prospective tenant and represents a steppingstone towards the finalisation of the agreement on the move in date. It seems to me reasonable for a prospective landlord to require such payments before the deadline for agreement and unreasonable for a prospective tenant to refuse to pay them. The payment will create a binding legal relationship between the parties and as mentioned above, provides an additional degree of security for both the landlord and the tenant that a formal tenancy will commence. In my judgement, by refusing to make payment the Applicant has failed to take all reasonable steps to enter into a tenancy agreement before the deadline for agreement.
22. In those circumstances the exception in paragraph 11 of Schedule 2 to the Act applies and the holding deposit is not required to be repaid under paragraph 3 of Schedule 2.
23. I should add that the arguments in relation to section 47 of the Landlord and Tenant Act 1987 are unfounded. The Applicant was never the tenant of the property and section 47 cannot apply.

Mr P Barber  
Tribunal Judge