



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

**Case reference** CAM/26UE/HTC/2022/0005

**HMCTS Code** P: PAPERREMOTE

**Property** : 22 Brookside Crescent, Cuffley, EN6  
4QN

**Applicant** : Mr Rasheed Zahir Mohammed Imran

**Respondent** : Banc Property Group

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

**Tribunal** : Judge Wayte

**Date** : 16 January 2023

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined on paper. In accordance with the directions, I have considered the application and supporting documents and the respondent's reply and supporting documents.

**The tribunal's decision is that the Banc Property Group are ordered to pay the applicant £400 by 31 January 2022.**

## **The application and determination**

1. On 10 October 2022 the applicant applied to the tribunal for the return of a holding deposit of £400 paid to the Banc Property Group on 14 September 2022.
2. The tribunal gave directions on 5 December 2022 providing for the matter to be determined on the papers unless either party made a request for a hearing by 9 January 2023 or the tribunal, having reviewed the papers, considered that a hearing was required. No request was made, and I did not consider a hearing was necessary to determine the issue fairly and justly.

## **The law**

3. Paragraph 3 of Schedule 1 to the Tenants Fees Act 2019 (“the 2019 Act”) states that a payment of a holding deposit is a permitted payment, provided that it is for a maximum of one week’s rent and the agent has not already been paid a holding deposit for the same property.
4. The detailed provisions in respect of the treatment of holding deposits are set out in Schedule 2. The starting point is that the holding deposit must be repaid if: *“the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement”* (paragraph 3(c)).
5. This starting point is subject to a number of exceptions, including paragraph 10 which states: *“Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for the agreement that the tenant has decided not to enter into a tenancy agreement”*. The relevant part of paragraph 13(b) states that paragraph 10 will not apply *“if, before the deadline for the agreement, the landlord or 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.”*
6. Under paragraph 5, if the person who received the holding deposit believes that any of the exceptions apply, they must give notice in writing to the person who paid the deposit within 7 days beginning with the deadline for agreement. The deadline for agreement is the fifteenth day beginning with the date the holding deposit was received by the letting agent, unless an alternative date is agreed in writing.
7. Where a holding deposit has not been repaid, the relevant person may make an application to the First-tier Tribunal for recovery of the money. Section 15(9) states that on an application the Tribunal may order the landlord or letting agent to pay all or any part of the amount to the relevant person within the period specified in the order.

8. Guidance has been published by the Government for the enforcement authorities, landlords and letting agents and tenants. It is available on the internet and sets out the basis on which holding deposits can be taken and must be returned.

### **The applicant's case**

9. The applicant states that from the time that he and his wife applied to rent the property, they had a feeling that the landlord or agent did not really want them as tenants; delaying both the application process and the signing of the tenancy agreement. When that was delayed beyond the deadline for the agreement, they sought the return of their deposit which was refused by the respondent.
10. The details given in the application form gave the timeline starting from 12 September 2022, when the couple applied for the property. On 14 September they heard that they had been accepted, subject to references and paid the holding deposit of £400 by bank transfer. On 21 September 2022 Lauren Meaney, the Property Manager for the respondent, emailed the couple to confirm that they were waiting for the reference and would work towards a moving in date of 14 October. The applicant responded to say he would prefer 22 or 23 October to allow time to order furniture. He also emailed later that day to chase the reference request as their current agent had not received it.
11. On 23 September there was an exchange of emails about the reference, moving in date and a date to measure up. The applicant confirmed that he wanted to sign the contract as soon as possible as he did not want to order his furniture or arrange for internet access before doing so and he could not move into the property without either furniture or internet. In terms of the contract, Lauren replied "*With regards to the contract, I am happy for you to read it but we will need you to come and sign it in person we normally do this on the day of moving in and (sic) long with a couple of other forms you and Alexandra will need to sign.*" The applicant responded that: "*We have always signed the contract immediately after referencing and just before giving in our notice to our current place*". He suggested signing the contract on the same day as the measuring up visit and asked the respondent to confirm that would work for them.
12. On 26 September the respondent confirmed that the references were acceptable. The measuring up visit was set for 5pm on 27 September and beforehand the applicant's wife indicated that they would like a couple of amendments to the tenancy agreement which they had been sent on 23 September.
13. On 29 September at 11.32am the applicant's wife emailed the respondent to reiterate that they needed the contract to be signed by both parties so that they could give notice on their current place. The respondent replied at 2.11pm saying an emailed copy would be sent later that day. At 2.42pm the applicant emailed the respondent to say

that due to the delays and the expiry of the deadline for the agreement, they wanted their holding deposit repaid.

### **The respondent's case**

14. The respondent's case was sent to the tribunal on 6 January 2023. They denied any delays on their part or by the landlord. They stated that the deposit was retained due to the tenants pulling out after an agreement to rent the property from 22 October, over three weeks away. They also denied that there was any question of the agents or landlord not wanting them as tenants. The statement included a timeline. There was broad agreement as to the key dates, in particular it was accepted that the holding deposit was paid on 14 September 2022 and that the tenants withdrew on 29 September 2022 before they were sent a copy of the agreement signed on behalf of the landlord.
15. The respondent included their case log and copy emails. They included correspondence after the email from the applicant at 2.42pm on 30 September 2022, denying the delays and reiterating that the landlord was still willing to proceed with the letting. On 7 October 2022 the respondent wrote to the applicant to confirm that the deposit would not be returned due to the marketing and referencing costs incurred due to the tenants' withdrawal.

### **The tribunal's decision**

16. There is no dispute that the holding deposit of £400 was paid on 14 September 2022. According to the Homelet particulars included with the respondent's case, the monthly rent was £2,100 and therefore the amount is within the upper limit of one week's rent, although it is a relatively large amount for a holding deposit. A copy of the tenancy agreement should have been provided by the respondent before the holding deposit was taken together with clear information as to the circumstances where all or part of the deposit may be lost, in accordance with the 2019 Act. It is not clear whether the respondent provided this information and a copy agreement was only sent on 23 September 2022. The respondent should amend their procedures in future to be sure of compliance with the Act.
17. Given that the holding deposit was paid on 14 September 2022, the deadline for the agreement under the 2019 Act was 28 September 2022. The tenancy was not completed by that or any date and therefore the starting point is that the applicant is entitled to the return of his holding deposit.
18. It is true that the tenants withdrew from the agreement but that was on 29 September 2022, after the deadline for the agreement had expired. In the circumstances the exception in paragraph 10 of Schedule 2 does not apply.

19. Again, the respondent needs to tighten up their procedures to ensure that the agreement is entered into within this deadline as opposed to their stated practice of signing the agreement when the tenants move in, as confirmed in their email dated 23 September 2022 quoted in paragraph 11 above. Their explanation for why they intended to keep the deposit was similarly late. Paragraph 5 of Schedule 2 obliges the respondent to repay the holding deposit if it fails to give a notice in writing within 7 days beginning with the deadline for the agreement explaining why the respondent intends to keep the deposit. That deadline expired on 4 October 2022 and the email was not sent until 7 October 2021.
20. I do not consider there is any evidence that either the agency or the landlord did not want to let to the applicant and his wife, more a mismatch between the respondent's rather relaxed timeline for entering into the agreement compared to the requirements of the Act and of the applicant who wanted to be certain of the letting before he gave notice to his current landlord.
21. Although paragraph 3 of Schedule 2 states that the respondent must repay the deposit and no exceptions apply, section 15 of the 2019 Act appears to give the tribunal a discretion as to whether to order payment of all or any part of the amount.
22. On balance, I consider that the full amount should be repaid. As letting agents it was the responsibility of the respondent to comply with the 2019 Act. It is not clear whether they gave any advice to the applicant at the outset about the potential retention of the holding deposit but they clearly failed to appreciate the deadline for the agreement until it had expired. As the applicant pointed out, they could have asked for an extension to the deadline and failed to do so. I accept that the applicant asked for amendments to the agreement on 27 September 2022 but there is no indication that they were unreasonable. For whatever reason the applicant and his wife lost confidence in the letting but as the deadline had expired when they withdrew, they are entitled to the return of their deposit. I might have made an allowance for the wasted referencing costs had they been provided by the respondent with their case but retaining the entire deposit is unwarranted.
23. In the circumstances I order the respondent to repay the applicant £400 by 31 January 2023. The monies should be repaid via the account details provided by the applicant in his email to the respondent dated 30 September 2022 at 09.26.

Regional Judge Ruth Wayte

## **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).