



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

Case reference : **LON/00AE/HTC/2023/0001**

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

Property : **19 Staverton Road, London NW2 5EY**

Applicant : **Khadijeh Keshppoor Amlashi**

Representative : **N/A**

Respondent : **Saloomeh Sahebanolahmadi**

Representative : **N/A**

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

Tribunal member : **Judge Tagliavini**

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

Date of decision : **27 July 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal finds the £250 paid by the applicant to the respondent as a holding deposit in respect of the property situate at 19 Staverton Road, London NW2 5EY is a recoverable payment pursuant to Schedule 2 and section 15(2)(3) and (5) of the Tenant Fees Act 2019 and must be returned to the applicant within 7 days of this decision being sent to the parties.**

- (2) The tribunal orders the respondent to reimburse the applicant with the application fee and hearing fee (if any) within 7 days of this decision being sent to the parties.**

Background

1. This is an application for an order for the recovery of part of a holding deposit paid in respect of a prospective tenancy of 19 Staverton Road, London NW2 5EY, pursuant to section 15 of the Tenant Fees Act 2019. In addition, the applicant seeks to recover any costs incurred in making the application to the tribunal. The applicant has also requested the tribunal make an order for interest to be paid but that is not a matter within the jurisdiction of the tribunal.

2. The tribunal gave Directions dated 9 June 2023 requiring the respondent to provide any objection and reasons. The respondent has failed to comply with this direction and therefore the application is determined on the basis of the applicant's documents only.

The applicant's case

3. In the application form, the applicant stated that the respondent is the Landlord of 19 Staverton Road NW2 5EY ('the Property'). On 9 October 2022, the applicant viewed the Property as a prospective tenant. On 11 October 2022, the applicant paid a holding deposit of £250 to the respondent. However, a few days later the respondent told the applicant that the Property was no longer available and stated there was an alternative property available that the applicant could view. However, details of this alternative property were not provided to the applicant and no tenancy was entered into by the parties in respect of the subject Property or any alternative property. Subsequently, the applicant requested the return of the holding deposit of £250 but this was refused by the respondent.

4. The applicant asserts that as the parties failed to enter into a tenancy agreement within fifteen days of the respondent receiving the holding

deposit, the Respondent was required to repay the holding deposit to me under paragraph 3(c) Schedule 2 of the Tenant Fees Act 2019 and was required to do so by 2 November 2022 under paragraph 4(c) of Schedule 2 of the Tenant Fees Act 2019, or provide me with her written reasons by the same date under paragraph 5(1) of Schedule 2. However, the respondent failed to provide the applicant with her written reasons by that date and has failed to repay the holding deposit. Even had she provided the reasons within the time frame required under Schedule 2, the reasons that the Respondent has given for failing to repay the deposit are not sufficient to meet the exceptions in Schedule 2 of the Act.

The tribunal's decision

4. The tribunal finds the payment of the holding deposit of £250 is a recoverable payment pursuant to ss.15(2) (3)) and (5) of the Tenant Fees Act 2019 and must be returned to the applicant by the respondent.

The tribunal's reasons

5. Paragraph 3 of Schedule 2 of the Tenant Fees Act 2019 states:

3Subject 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.

4If 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.

6. The tribunal finds the applicant paid the respondent a holding fee of £20 as evidenced by the proof of payment provided. The tribunal also finds the respondent has failed to comply with the provisions of Schedule 2 of the Tenant Fees Act 2019 and has failed to either enter into a tenancy agreement with the applicant in respect of the subject Property and has failed to provide written reasons as to why they do not intend to repay it.
7. Therefore, the tribunal finds the respondent is in breach of the Tenant Fees Act 2019 and is required to return to the applicant the holding deposit paid of £250 within 7 days of this decision being sent to the parties.
8. The tribunal also orders the respondent to reimburse the applicant with the application fee of £100 and any hearing fee paid within 7 days of the date of this decision being sent to the parties.

Name: Judge Tagliavini

Date: 27 July 20123.

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).