



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

Case reference : **LON/00AH/HTC/2023/0007**

Property : **145 Beulah Road, CR7 8JJ**

Applicant : **Cheryl Effiom**

Representative : **N/A**

Respondent : **Nawaz Qaiser**

Representative : **N/A**

Type of application : **For recover 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 : **9 August 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal finds the respondent is not required to return the holding deposit of £500 to be returned to the applicant and the application is dismissed.
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The application

1. This is an application for an order for the recovery of a holding deposit of £500 paid in respect of a proposed tenancy of 145 Beulah Road, CR7 8JJ and made pursuant to section 15 of the Tenant Fees Act 2019.

Background

2. On 7 April 2023, the applicant prospective tenant paid to the respondent landlord a holding deposit in the sum of £500 in respect of a tenancy for the subject premises at 145 Beulah Road, CR7 8JJ. Subsequently, the tenancy did not proceed and despite requests by the applicant, the holding deposit has not been repaid by the respondent.
3. Directions dated 16 June 2023 were given to the parties by the tribunal and both parties have provided the tribunal with documents on which they seek to rely. Neither party requested an oral hearing.

The hearing

4. The application was determined on the documents provided by both parties.

The tribunal's decision

5. The tribunal finds the holding payment of £500 is not required to be returned to the applicant by the respondent.

Reasons for the tribunal's decision

6. The tribunal has regard to the provisions of Schedule 2 of the Tenant Fees Act 2019 and its application to the facts of this matter.
7. The tribunal finds from the evidence provided in the parties' documents the following chronology:

- 8 April 2023: Holding deposit of £500 paid by the applicant to the respondent landlord in respect of a proposed tenancy of the subject property at £2,195.00 per month.
- 11 April 2023: The applicant states she will send over the initial one months rent of £2200 (sic) to the respondent by 2 p.m. on 12 April 2023.
- 12 April 2023: Applicant informs the respondent that ‘I am sorry the I had not sent the payment as promised.I am now expecting the money to arrive by 2pm tomorrow. Therefore, if I have not sent £2000 by 2.15 pm tomorrow, do feel free to remove me from your consideration and proceed with someone else.
- 13 April 2023: The sum promised by the applicant and due by 14/04/2023 is not paid to the respondent.
- 14 April 2023: The applicant informs the respondent’s agent she does not wish to proceed with entering into a tenancy agreement for the subject property.
- 15 April 2023: Telephone request made on applicant’s behalf to the respondent’s agent for the return of the £500 holding deposit.
- 15 April 2023: The applicant is informed by email from the respondent’s agent Mr Shak, the £500 holding deposit will not be returned, as the respondent has suffered financial loss through having stopped actively marketing the subject property from 8 April 2023 and that further costs will be incurred due to having to put the property back of the rental market after having lost interest from other potential tenants.

The Law

7. The relevant paragraphs of Schedule 2 of the Tenant Fees Act 2019 state:

1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England.

Interpretation

2(1) In this Schedule “the deadline for agreement” means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.

(2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule.

Requirement to repay holding deposit

3 Subject as follows, the person who received the holding deposit must repay it if—

(a).....

(b).....

(c) the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.

4 If paragraph 3 applies, the deposit must be repaid within the period of 7 days beginning with—

(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).....

(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.

Exceptions

6.....

7.....

8.....

9.....

10 Subject to paragraph 13 paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.

11 Subject to paragraph 13 paragraph 3(c) does not apply where the deposit is paid to the landlord if—

(a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and

(b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but

(c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.

12.....

13 Paragraph 10 11 or 12 does not apply (so that paragraph 3 (c) does apply) if, before the deadline for agreement—

(a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or

(b) the landlord or a 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.

8. The tribunal finds the applicant failed to enter into a tenancy agreement before the deadline for the agreement of 23 April 2023 (being 15 days after the date of payment of the holding deposit), or in

the alternative, the deadline agreed between the parties of 15 April 2023 and that the provision of paragraph 3(c) apply. However, the tribunal finds the exception to the return of the holding deposit provided by paragraph 11 of Schedule 2 applies. The tribunal finds the tenancy was not entered into due to the applicant's inability to pay the agreed deposit for reasons that have not been fully explained but appear to relate to the applicant's inability to access the necessary funds.

9. Further, the tribunal finds neither the respondent or his agent took any steps to prevent the applicant from entering into a tenancy agreement or acted in a way that it would be unreasonable for the applicant to enter into a tenancy agreement with the respondent.
10. Consequently, on the facts of this matter, the tribunal finds the exception to paragraph 3(c) applies pursuant to paragraph 11 of Schedule 2. The tribunal finds therefore, the holding deposit of £500 is not required to be returned to the applicant.
11. In conclusion, the application is dismissed.

Name: Judge Tagliavini

Date: 9 August 2023

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).