



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

Case reference : **BIR/00FY/HTC/2023/0001**

Property : **Flat 25, 21 St Mary's Court, Nottingham
NG1 1AY**

Applicant : **Carol Watfi**

Representative : **Ms Corrina Purves from Nottingham
University Students Union**

Respondents : **LoAy El Hady (1)
City Squared Property Limited (2)
East Midland City Stays Limited (3)**

Representative : **None**

Type of application : **Application for recovery of all or part of
a prohibited payment or holding deposit
from the landlord or letting agent under
the Tenant Fees Act 2019**

Tribunal member : **Judge C Goodall**

**Date and place of
hearing** : **19 October 2023 by video hearing**

Date of decision : **24 October 2023**

DECISION

Background

1. The Applicant was a tenant (along with her sister) of Flat 25, 21 St Mary's Court, Nottingham ("the Property"), from 20 May 2022. She was the only active tenant.
2. As she was an international student, she agreed to pay the rent in full for a whole year. The sum of £18,000.00 (rent of £1,500.00 per month) was accordingly paid at the beginning of the tenancy on 20 May 2022, together with a deposit of £1,730.00, which was protected under the tenancy deposit scheme.
3. There was a burglary at the Property at some point between 5 June and 5 July 2022. As a result, the Applicant wished to end the tenancy. The Respondent's agent agreed to an early surrender.
4. When the landlord's accountant accounted to the Applicant for the balance of rent that became repayable as a result of the early surrender, various deductions were made from the sum repaid.
5. On 6 January 2023, the Applicant applied to the Tribunal for recovery of those deductions under the Tenant Fees Act 2019.
6. The application was heard on 19 October 2023 by video hearing. The Applicant attended. She was represented by Ms Corrina Purves from Nottingham University Students Union. Mr Loay El Hady (the First Respondent) attended also.
7. This is the written reasoned decision of the Tribunal on the application.

Facts

8. There are three Respondents to this case. City Squared Property Limited is the correct name (so far as the Tribunal understands) of the legal entity which entered into the tenancy agreement with the Applicant and her sister, which was described in the agreement as "City Squared Properties". In emails dated 19 & 28 April 2023, the First Respondent, who is also sometimes known as Leon Hady, and has an email address "leonisjames@...", informed the Tribunal that City Squared Properties did not own the Property, but he owned it through his company East Midlands City Stays. Neither City Squared Properties nor East Midlands City Stays were identified as limited companies, though it is highly likely that they are.
9. Companies House records indicate that there are companies known as City Squared Property Ltd and East Midlands City Stays Ltd registered on the register of companies. Mr El Hady is a director of both and is listed as a person with significant control for the latter.
10. The Tribunal does not have any land registry documents to establish without doubt the ownership of the Property. In this decision, I will refer

throughout to the owner of the Property as the landlord and will deal at the end with the question of against whom any order for repayment should be made.

11. A bundle of documents had been supplied with the application, including a copy of the tenancy agreement and a series of emails between the Applicant and the Respondents' agent. The Applicant also gave oral evidence. The Respondent had provided a very short statement on an email, and he also give evidence at the hearing. I find from the above material that the facts were as set out below.
12. The Applicant took possession of the Property from 20 May 2022. She did not in fact move in at that point, or indeed ever, but she had the keys and possession.
13. She felt there were some issues with the accommodation; in particular that the lock was not secure, and she reported this to the landlord's agent.
14. On 5 July 2022, the Applicant had agreed with the landlord's maintenance man to meet him at the Property so that the lock could be attended to. On arrival, she discovered that there had been a burglary. The television in the flat (belonging to the landlord) had been stolen. The police were called that day.
15. The following day (6 July 2022), the police forensics team came to take fingerprints. The landlord's agent was also present whilst this work was underway. The Applicant had a conversation with the agent and explained that she wanted to move out of the flat due to the burglary and to surrender the tenancy. The Applicant said that the agent told her that would be fine as long as the Applicant emailed that request and gave one month's notice.
16. On 7 July 2022, the Applicant emailed the agent, saying:
"I'd like to end my tenancy starting from 7/7/2022. This is my one month's notice."
17. On 11 July 2022, the agent emailed the Applicant in these terms:
"Yes you can end your tenancy. As discussed previously, I can end your tenancy as of the date you wanted 7/7/2022. However, that is your months notice. So you pay for that month and you will receive the rest of the given money back to your account. ..."
18. In an email also dated 11 July 2022, (but must have been after the email referred to in the preceding paragraph), the agent said:
"... I am also just sorting your tenancy out to end. However, what date do you want to leave the property? You have until 7/8/2022 because of the month's notice. But are you planning to leave before?"

19. The Applicant had vacated the Property and handed in the keys at the latest by 23 July 2022.
20. The Property was relet on 26 August 2022.
21. On 16 September 2022, the landlord arranged a partial refund of £2,000.00.
22. In October 2022, the landlord's agent informed the Applicant that the sum that was to be refunded to her (in addition to the partial refund in September), was £10,172. In addition, the deposit held in the tenancy deposit scheme of £1,730 was to be refunded. It is common ground that these payments have been made.
23. The landlord's agent however retained the sum of £1,178.00 for the following items:

Finder fee for finding a new tenant	400.00
Tenancy handling fee	108.00
Admin fee for setting up refund and allowing early tenancy release	200.00
Cleaning fee	220.00
Replacement of television	<u>250.00</u>
Total	1,178.00

24. The landlord had calculated the rent to the date of surrender of the tenancy (which would also be a deduction from the rent to be refunded) to be £4,650.00 (being £18,000.00 minus the returned rent in the landlord's calculation of £13,350.00 – said to be 8.90 month's rent at £1,500.00 per month).
25. Thus, from the landlord's point of view, and ignoring the deposit because that had been repaid in full, the repayment of £12,172.00, plus the deduction of the costs incurred of £1,178.00, plus the legitimate rent to the landlord's selected date of surrender of £4,650.00, meant the rent had been refunded in full.

The Applicant's case

26. The Applicant's submission is that all the deductions referred to in paragraph 23 above are prohibited deductions under the Tenant Fees Act 2019 ("the Act"). The provisions of the Act and the Applicants detailed submissions will be dealt with in the discussion below.
27. In addition, the Applicant claims that the agreement for the surrender of the tenancy was that the tenancy terminated on 7 August 2022. The landlord has charged rent of £887.67 (for 18 days of rent) for a period beyond 7 August 2022 which is also a prohibited payment, and so should be ordered to be repaid. Again, this will be discussed in detail below.

The Respondent's case

28. Mr El Hady accepted at the hearing that he had not engaged with the Applicant's arguments concerning the Tenant Fees Act. He said he was not familiar with it. His evidence was that all the fees in dispute had in fact been paid by him, and all he had agreed to do was assist the Applicant with her request to end her tenancy early. He wanted to help the Applicant, and he should not be out of pocket as a result of assisting her. He had been under no obligation to do so.
29. He said he had instructed his staff that he would release the Applicant from her obligation to pay rent from the date the Property was re-let, though he accepted that the emails and conversations between his agent and the Applicant might have created a different perception. He had not, and did not, provide any details to explain how the fees charged were calculated.

The tenancy agreement

30. The written tenancy agreement, in operation from 20 May 2022, but curiously dated 9 August 2022, contains provisions allowing the landlord to retain certain monies out of the deposit, including the costs of replacing missing items for which the tenant may be liable, professional cleaning if the property had been professionally cleaned by the landlord before it commenced (paragraph 6.3), and certain administration costs for writing reminder letters (see paragraphs 2.4.1, 2.4.2, 8, and 16).
31. There are no other contractual provisions allowing the landlord to deduct or charge any other costs either from the deposit or generally.
32. The tenancy agreement also contains covenants by the tenant to take reasonable care of the Property and deliver it up in a clean and tidy condition and in good order.

Discussion

33. The scheme of the Act is that no payments can be demanded from a tenant unless they are permitted payments. All other payments taken from a tenant are prohibited payments.
34. Permitted payments are listed in Schedule 1 to the Act. Rent is a permitted payment, as are:
 - a. Payments in respect of a default by the tenant, though a default is very narrowly limited to loss of a key or failure to pay rent (paragraph 4);
 - b. Payment of damages for breach of a tenancy agreement (paragraph 5);
 - c. Payments in consideration of a variation or a tenancy agreement at the tenant's request, but only an amount which is the greater of £50 or the reasonable costs of the variation (paragraph 6);

- d. Payment of consideration on terminating a tenancy at the tenant's request before the end of the term, but only up to the loss suffered by the landlord or letting agent (paragraph 7).
35. My task is to consider whether any of the sums retained by the landlord out of the rent prior to refunding it to the Applicant are permitted payments. If not, they are prohibited payments and must be returned.

Rent

36. I start by considering the rent. I find, on review of the facts above, that the landlord had agreed that the Applicant's tenancy could be surrendered on the terms set out by the landlord's agent in paragraph 17 and 18 above. Therefore, I find that the tenancy ended, by agreement, on 7 August 2022. This is evident from the oral conversation between the landlord's agent and the Applicant on 6 July 2022, and the subsequent emails of 11 July 2022 from the landlord's agent.
37. It would have been entirely possible (and probably entirely reasonable) for the landlord to have agreed to terminate the tenancy from the point that a new tenant signed up, rather than from 7 August, but that was not what was agreed. That option would, in my view, have been consideration for the termination of the tenancy at the tenant's request, and would have been a permitted payment. But I must be governed by the terms of the actual agreement between the parties, not the terms the landlord now wishes he had agreed. The only consideration required for the early termination of the tenancy was one month's rent.
38. As the tenancy ended on 7 August 2022, the liability for payment of rent ceased on that date. Any deduction for rent after that date, by definition, is a prohibited payment, as it is not for rent due under the tenancy.
39. The Applicant claims repayment of the rent deducted for the period 8 August to 25 August 2022 at a rate of £49.315 per day. That period is 18 days, so the sum claimed is £887.67.
40. At the hearing, Ms Purves submitted that the rent properly due from the beginning of the tenancy to the correct date of termination (7 August 2022) was £3,887.67 (2 months at £1,500.00 per month plus 18 days from 20 July to 7 August at £49.315 per day). In fact, I calculate that to be 19 days, rather than 18, but the discrepancy is of little consequence.
41. From the landlord's perspective, the agent's calculation of the rent due to the date the landlord considered he was entitled to rent was the sum of £4,650.00 (see paragraph 24 above). This calculation derives from the agent's assessment that 8.9 months were left of the lease term, hence, by deduction, 3.1 month's rent were properly due. Calculating rent due using a decimal system is problematic as the calendar is not neatly divisible by ten. It is not clear how the landlord's agent reached his figure of £13,350.00. If, as the Applicant thought, the calculation was from 26

August 2022, as that was the date the Property was re-let, that would be 268 more days to the end of the annual tenancy, which at an even rent throughout the year is £13,216.42; not £13,350.00. So, I consider the use of the sum of £13,350.00 in the landlord's agent's calculations to be in error.

42. Fortunately, I consider that the exercise of trying to calculate the date used in the landlord's calculation for the end of the period he considered he was entitled to rent is an unnecessary exercise. Now I have decided that the correct date of surrender was 7 August 2022, the necessary calculation is simply that of calculating the rent due to that date. All rent due to that date is a permitted payment; all rent deducted after that date is a prohibited payment.
43. My view is that the most equitable method of calculating the rent due from commencement of the tenancy to the 7 August 2022 is to use a daily rate of the whole annual rent divided by 365. This produces a daily rent of £49.315. 20 May to 7 August is 79 days. The rent properly deductible for the period of the tenancy to its surrender is therefore £3,895.88.
44. The rest of the rent of £18,000.00, (i.e., £18,000.00 minus £3,895.88) is £14,104.12. This is the sum that the Applicant was entitled to have refunded on the surrender of the tenancy. As the landlord used the sum of £13,350.00 in his calculations, he made an error worth £754.12 in his favour. That sum will need to be refunded to the Applicant.

Other deductions

45. If any of the deductions listed in paragraph 23 above fall within the scope of permitted payments as listed in paragraph 34 above, then I would have to determine that they were allowed. If not, then they are prohibited payments, and I would have to determine that they be repaid.
46. I consider that the names of the first three items (finders fee, tenancy release fee, and administration fee) are unhelpful in that the landlord has given no detail on exactly what work was involved for each fee to justify them. These are phrases that a landlord's agent might use in justifying to a landlord the imposition of a charge to the landlord for dealing with the letting of a property, but they are not fees that a tenant would normally be expected to pay.
47. I refer readers back to paragraph 37 above, in which I explained that the landlord could have structured the agreement to surrender in such a way that he could have deducted rent until the date of re-letting. In the same way, I consider that the fees under consideration could have been structured so that they were permitted payments, by requiring that early surrender be allowed only if the tenant paid those fees. If this had been the case, the fees would have been consideration for the agreement to terminate the tenancy. That payment would have been a permitted

payment under paragraph 7 of Schedule 1 to the Act, as long as the fees were reasonable.

48. But on the facts, the landlord did not impose a condition of payment of a sum of money to compensate him for extra fees in return for his agreement to early termination, and instead only decided to charge the fees after the termination. The agreement to termination was, on the facts, not in consideration of the payment of the extra fees. The fees were not mentioned at all. These three items are therefore prohibited payments and will be repayable.
49. The fourth item is a cleaning fee. Cleaning fees are no longer permitted payments. It is not lawful to demand a fee for cleaning on termination of a tenancy. The fees are not included in Schedule 1 of the Act as permitted payments.
50. What a landlord is entitled to do is make a claim for damages under paragraph 5 of Schedule 1 to the Act if the tenant is in breach of her obligation to deliver the Property up in a clean and tidy condition. It would have been for the landlord to prove the breach and the damages that arose from it. There was no evidence presented by the landlord of the condition of the Property upon surrender of the tenancy. Therefore, I cannot determine that any breach of covenant has occurred, and the landlord has no entitlement to make a charge for cleaning.
51. Finally, there is a charge of £250.00 to replace the television that was stolen in June / July 2022. The landlord did not explain how responsibility for the burglary could be laid at the Applicant's door, and it is difficult to conceive of circumstances when it could. The normal route to recovery of stolen items is through insurance.
52. What is, I think, clear, is that unless the landlord was able to establish that the loss of the television arose because of the Applicant's breach of her tenancy, which he could not, no other paragraph in Schedule 1 to the Act applied to the deduction, and it was therefore a prohibited payment and will need to be repaid.
53. The preceding discussion and conclusions indicate that the appropriate order on the application is to order that the landlord should pay the amounts of the prohibited payments to the Applicant. The amount of £754.12 is repayable as it is rent that was unlawfully deducted from the refund due to the Applicant. All the deductions listed in paragraph 23 are prohibited deductions totalling £1,178.00. The total amount is therefore £1,932.12.
54. As alluded to earlier in the decision, it is not clear against which entity the order should be made. At the hearing, Mr El Hady gave every indication that he would abide by the decision of the Tribunal relating to any repayment the landlord had to make. The issue of the appropriate

Respondent has little impact if repayment is in fact made in a timely manner by one of the Respondents.

55. But in absence of clarity, and as Mr El Hady appeared to accept that he would be responsible, the Second Respondent was the named landlord on the tenancy agreement, and the Third Respondent is the entity that Mr El Hady said owned the Property, I order that the Respondents should jointly and severally be responsible to make the repayment. However, if this is considered to be incorrect by the Respondents or any of them, I give liberty to apply for a further determination of who is the real landlord against whom the order should be made.
56. As mentioned at the hearing, there were two tenants of the Property. Only the Applicant has brought this claim, and I have no information on who actually paid the rent. The Applicant confirmed that her sister had no involvement in the application and so had not paid any fees that she could seek to reclaim. For the avoidance of doubt, I regard this decision as determining all claims under the Act for both tenants.

Decision

57. The Respondents, jointly and severally, are to repay the sum of £1,932.12 to the Applicant within 14 days of the date of this decision.
58. This order is enforceable by the County Court as if the amount payable under the order were payable under an order of that court.

Appeal

59. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)