



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

Case reference : **LON/00AN/HTC/2023/0015**

Property : **37C Goldhawk Road, London W12 8QQ**

Applicant : **Andrea Gabriella Aakanksha**

Respondent : **RSB Estate Agents**

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

Tribunal : **Judge Adrian Jack, Tribunal Member
Alison Flynn MA MRICS**

Date of decision : **13th December 2023**

DECISION

Procedural

1. This is an application dated 21st September 2023 for an order for the recovery of a holding deposit paid in respect of a tenancy (or proposed tenancy or licence) of 37C Goldhawk Road, London W12 8QQ pursuant to section 15 of the Tenant Fees Act 2019.
2. It is common ground between the parties that on or about 5 August 2023 the respondent letting agents asked for and received a payment of £500 from the applicant who was the would-be tenant (or licensee). Despite requests, the agents have not repaid the deposit and deny any liability to do so.
3. The applicant alleges that the payment is a holding deposit within the meaning of the Tenant Fees Act 2019 and is liable to be repaid.
4. The Tribunal gave directions on 31st October 2023. These directed that the matter be determined on paper, with the option for either party to

request an oral hearing. In the event, neither party has requested an oral hearing and we determine the matter on the papers.

The facts

5. There is reasonably little dispute about the outline facts. The agents advertised on spareroom.co.uk what was described as “Room to let in London W12”. It was said to be “student friendly”. The rent was £200 per week. The advertisement said: “All bills included — Gas, TV licence, electricity, wifi, water and council tax.”

6. The respondent says:

“I went for a viewing of the room on the evening of August 05, 2023. I was asked to make a holding deposit payment of £500 within that evening or else I would lose the room. When the room was advertised, it was mentioned on the advertisement that the rent would include all bills, but on meeting it was said that I will have to pay an additional £20 if the bills were ‘excessive’, which I further agreed to despite not being what was initially advertised. Within the next hour, I made two payments first a £100 and then the remaining £400. The morning of August 07, 2023 I received a quote from the agency which apart from the first month's rent to be paid had other miscellaneous fees (DPS Admin £85 and Reference £85) and an energy bill charge worth £86.66 which was to be paid by me. This pushed the room rent from the agreed £850 per month (weekly £200) to £936 which made it out of my budget. Due to this, on the evening of August 08 I conveyed my disinterest in the room due to the constant alteration of the rent and miscellaneous charges that was asked to be borne by me.”

7. There is an invoice, described as a “quote”, dated 7th August 2023 from the agents which bears this out.

8. Mr Teerat Singh of the agents says:

“After viewing the flat and thoroughly discussing the details, [the applicant] agreed to rent the flat and was in fact quite keen to move in as soon as possible. She willingly offered 500 pounds to secure and hold the flat which gave the agency the confidence to take the property off the market, we did however followed procedure and waited for the reference checks which she unfortunately failed. She offered to add in a guarantor and by doing so we were able to proceed with her renting out the flat.

On the day she was expected to move in Andrea messaged the agency that she will not be going ahead with the flat as she can't afford it, despite having an in-depth discussion with the agency staff. As inconvenient as that was, we had to respect that. She then turned around and demanded her holding deposit back

which she is not entitled to after she was the one to pull out from the deal.

I have tried multiple times to call her and discuss this with her, but she refuses to take my calls and isn't cooperating at all. [The applicant] has also sent the court a cost breakdown document in which I have added in DPS admin fee and reference costs. I would like to clarify that she has presented this information out of context. This document is one we use internally to track costs and expenditure as made clear by the title 'Quote' please also note the validity dates. [The applicant] wanted to see the costs involved so I was able to share this with her and verbally told her that when she becomes the tenant, she will receive an 'invoice' with the costs she's expected to pay. These will not include the highlighted entries she has presented. Furthermore she is not entitled to pay and has not paid any of the entries in the 'quote' other than the holding fee as she ultimately did not become a tenant.

I would also like to tell the court that [the applicant] has in fact signed the tenancy document before notifying the agency she will not want to proceed on the day of her move-in I, unfortunately, did not keep a copy of the document and shredded the document as she ultimately did not become a tenant via the agency."

9. We have not been shown the agreement, nor have the agents produced a sample agreement, as they could easily have done.
10. We do not accept Mr Singh's explanation of the "Quote". The document of 7th August 2023 gives no indication at all that there were expenses solely internal to the agents. On the contrary, the document is a clear demand for payment of £85 for "DPS admin", £85 for a reference and an energy bill of £86.66. This is directly contrary to the terms of the spareroom advertisement and the applicant's evidence as to what was agreed.
11. We find as a fact on balance of probabilities that the oral agreement between the parties did not include a provision for payment of the two administrative charges or for energy (save a potential £20 a month for excessive usage). We do not accept in the absence of sight of the alleged written agreement that there was any change.

The law

12. This area of law is now governed by the Tenant Fees Act 2019. The applicant falls as a "relevant person" by virtue of being a "tenant": see section 1(9) and section 28 (interpretation of "tenant"). The agents were letting agents within section 2, so are bound by the Act.
13. A holding deposit paid to an agent is permissible so long as it is not a "prohibited payment": section 2(1). The circumstances in which the

payment of a holding deposit is not a prohibited payment are set out in Schedule 2 to the Act. However, a holding deposit (even if otherwise permitted) is always limited to one week's rent: Schedule 1 para 3(3).

14. A holding deposit is repayable if the landlord and the tenant agree a tenancy agreement: Schedule 2 para 3(a). ("Tenancy agreement" and "tenancy" are widely defined: section 28.) However, there is an exception if the tenant agrees that the holding deposit can be credited against the rent or the tenancy deposit: Schedule 2 para 6.
15. A holding deposit is also repayable if the landlord and tenant fail to agree a tenancy agreement: Schedule 2 para 3(c). However, there are several exceptions to these provisions. The most common exceptions are Schedule 2 paras 11 and 12, which apply where the landlord and the agent have taken reasonable steps to finalise the agreement, but the tenant has not; or if the tenant simply withdraws: Schedule 2 para 10.
16. The provisions of paras 10 to 12 are disapplied in two cases (in effect by way of exceptions to the exceptions). The first is where "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": Schedule 2 para 13(a). The second is where "the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant... in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord": Schedule 2 para 13(b).

Discussion and conclusion

17. In our judgment, the holding deposit is repayable. There are a number of legal routes to reaching this result, but they all result in the same conclusion.
18. The most straightforward analysis is to apply Schedule 2 para 13(a). It is common ground that the agents demanded a holding deposit of £500. This was more than one week's rent. Accordingly, they demanded a "prohibited payment". This is in breach of section 2 of the Act. Whichever exception in paras 10 to 12 of Schedule 2 the agents could otherwise rely upon, the breach of section 2 renders them under an obligation to repay the holding deposit.
19. More complicated is the question whether the parties entered a binding agreement. We are not convinced that a binding agreement was reached. It is trite law that for there to be a binding agreement there must be agreement between the parties on the terms of the agreement. In the absence of any surviving copy of the supposed written agreement and any evidence it was signed by the parties, we are not satisfied that there was any final agreement reached between the parties. The fact that the "quote" was seeking additional sums suggests that there was no final agreement.

20. We find that the exception in para 12 does not apply. The holding deposit was paid on one basis, namely that there would be no energy charge (save for a possible £20 charge for excess usage) and no other charges; yet the landlord and the agents sought an agreement for more money. We find as a fact that neither the landlord nor the agents took reasonable steps to enter the agreement as it had been agreed orally. (Para 11 only applies where the holding deposit was paid to the landlord, which is not what occurred, but if the holding was so paid, para 11 would not have been satisfied either.)
21. The applicant's account of what was agreed orally is not substantially disputed by the agents. Indeed Mr Singh says various of the charges in the "quote" were solely for use internally and the applicant would not have been asked to pay these. We do not accept his explanation. The "quote" was on its face the money the agents sought to be paid by the applicant.
22. In our judgment, if there was a binding agreement, the agents by the presentation of the "quote" with demands for monies which were not agreed committed a fundamental breach of contract. The applicant, as she was entitled to, accepted the fundamental breach. Such behaviour on the part of the agents falls squarely within Schedule 2 para 13(b). On this basis too, the holding deposit would stand to be repaid.
23. We add for completeness that, even if we are wrong in our conclusions above, the agents would be bound to return the amount of the holding deposit which was in excess of one week's rent. The rent agreed was £850 per month. One week's rent is therefore £196.15 ($£850 \times 12 \div 52$). Accordingly, £303.85 would be repayment. In the event, however, the whole of the holding deposit is repayable.

DECISION

It is ordered that the respondent do pay the applicant £500.

Judge Adrian Jack

13th December 2023

SCHEDULE

The Tenant Fees Act 2019, so far as material provides:

- 1(9) In this Act "relevant person" means— (a) a tenant...
- 2(1) A letting agent must not require a relevant person to make a prohibited payment to the letting agent in connection with a tenancy of housing in England.
- 3(1) For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1...
- 15(1) Subsection (3) applies where—

- (a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and
 - (b) all or part of the prohibited payment has not been repaid to the relevant person.
- (2) Subsection (3) also applies where—
 - (a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
 - (b) all or part of the holding deposit has not been repaid to the relevant person.
- (3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of—
 - (a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit;
 - (b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit.
- ...
- (6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that, with the consent of the relevant person—
 - (a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
 - (b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.
- (7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.
- (8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.
- (9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period specified in the order.
- (10) A period specified under subsection (9) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the order is made.

(11) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court.

Section 28 (Interpretation) includes the following:

“tenancy” means—

- (a) an assured shorthold tenancy other than—
 - (i) a tenancy of social housing, or
 - (ii) a tenancy which is a long lease,
- (b) a tenancy which meets the conditions set out in paragraph 8 (lettings to students) of Schedule 1 to the Housing Act 1988, or
- (c) a licence to occupy housing;

“tenancy agreement” means an agreement granting a tenancy of housing to a tenant;

“tenant” includes—

- (a) a person who proposes to be a tenant under a tenancy,
- (b) a person who has ceased to be a tenant under a tenancy,
- (c) a licensee under a licence to occupy housing,
- (d) a person who proposes to be a licensee under a licence to occupy housing, and
- (e) a person who has ceased to be a licensee under a licence to occupy housing;

Schedule 1:

3(1) Subject to sub-paragraphs (3) to (6), a payment of a holding deposit is a permitted payment.

(2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).

(3) If the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment.

(4) In sub-paragraph (3) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52...

Schedule 2:

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.

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.

3 Subject 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.

4 If 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 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—

- (a) towards the first payment of rent under the tenancy, or
- (b) towards the payment of the tenancy deposit in respect of the tenancy.

...

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 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent if—

- (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and
- (b) the landlord takes all reasonable steps 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.

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.