



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

Tribunal Case reference	:	CHI/43UC/HTC/2023/0012
Property	:	58, Salisbury Road, Worcester Park, Surrey, KT4 7DE
Applicant	:	Mr Simon Sohanpal
Respondent	:	Connor Prince Estate Agents
Type of application	:	Recovery of a holding deposit S15(3) and (5) Tenant Fees Act 2019
Tribunal member(s)	:	Judge J Dobson
Date of Hearing	:	16 th January 2024
Date of Decision	:	16 th January 2024

DECISION

SUMMARY OF DECISION

- 1. The Applicant is not entitled to the return of the balance of the holding deposit.**
- 2. The claims for interest and fees/ costs fail.**

BACKGROUND

3. Proceedings were issued by the Applicant in the County Court under Claim No. 419MC214 in June 2023 for an Order for the return of the £210.00 balance of a holding deposit originally paid in the sum of £420.00 in respect of a flat known as 58, Salisbury Road, Worcester Park, Surrey, KT4 7DE (“the Property”)
4. The claim was transferred to the Tribunal by Deputy District Judge Byfield dated 13th October 2023. The case would have been heard on that date if the Court had not lacked jurisdiction to hear it. The Applicant did not attend, but that would not have prevented the Court proceeding in his absence. The transfer was on the basis that section 15(3) of the Tenant Fees Act 2019 (“the Act”) provides for a claim for recovery of the relevant amount paid to be made to the Tribunal. Notwithstanding that jurisdiction lies with the Tribunal, the Court had previously issued Directions for the parties to prepare their cases in the usual manner in the Court small claims track.
5. The Tribunal issued Directions following the transfer, noting that the Applicant had failed to provide any documents or witness statements and that if he sought to do so, he would need to apply for permission. The Directions also noted that the Respondent, as named, did not appear to be a legal entity against which the Tribunal can make any order, should it be appropriate to do so. Simply a name was given rather than a limited company, partnership or individual trading in that name. It was noted that in the event that the Applicant made an application to amend, the Tribunal could consider that.
6. A final hearing was listed today as video proceedings. It was explained that the parties must attend and that if a party failed to attend, the case was likely to be dismissed. In addition, that the Tribunal would consider the parties cases on the documents previously provided to the Court, subject to any application being made to rely on any additional evidence and such application being granted.
7. There was no direction for the provision of a hearing bundle, in light of the limited quantity of documents. For the avoidance of doubt, the Tribunal read the Claim Form, Defence, Directions Questionnaires, Respondent’s witness statement by Neil Prince and attached documents and the directions issued by the Court and the Tribunal. The Tribunal does not refer to every single document, considering it unnecessary to do so. Where the Tribunal does refer to documents, it does so by the name or description of the document: it cannot do so by page numbering.

THE LAW

8. The Act is one of a number of pieces of legislation enacted to enhance tenant's rights. The Act places a prohibition on landlords and letting agents from charging most payments associated with a tenancy other than rent and authorised tenancy deposits (up to five or six weeks' rent, dependent on the level of rent annually).
9. Much of the structure of the Act is built on the concepts of "prohibited payments" and "permitted payments". Section 3 of the Act defines a payment as a prohibited one:

"unless it is a permitted payment by virtue of Schedule 1"
10. Therefore, payments associated with a tenancy are prohibited unless an exception specifically permitted. Schedule 1 contains a list of permitted payments that is both long and detailed and must be considered in the context of the given case.
11. Section 15 provide that a relevant person can apply to the Tribunal for an order that the amount or part of the amount of a prohibited payment should be repaid to them. There are two conditions for making an application, namely that:
 - a) "A landlord or letting agent is in breach of (section 1 or 2 or) Schedule 2 and as a result has received a prohibited payment which has not been repaid or repaid in full, or"
 - b) [in relation to contracts with third parties]
12. Such an order must specify the time by which the repayment must be made, at least seven days but not more than fourteen days beginning with the day after that on which the order is made. The order is enforceable as if it were an order of the County Court.
13. By paragraph 3 of Schedule 1, payment of a holding deposit may be a permitted payment but there are stringent conditions. A holding deposit is defined as money paid to a landlord or letting agent before the grant of a tenancy with the intention that it is dealt with in accordance with Schedule 2 of the Act. Such a holding deposit is a prohibited payment to the extent that the amount exceeds one week's rent.
14. Schedule 2 provides for when a holding deposit must be repaid and when it can be retained. In summary, a holding deposit must be repaid pursuant to paragraph 3) where:
 - a) "The landlord and tenant enter into a tenancy agreement, unless the holding deposit is applied towards the first payment of rent due:
 - b) The landlord decides before the deadline for agreement not to enter into a tenancy agreement, in which event it must be repaid on that date. That deadline is the fifteenth day following the date the holding

deposit is paid or such other period as it agreed in writing by the tenant.

- c) The landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, in which event repayment must be on the deadline for agreement date.”

- 15. In terms of the timing of the repayment, paragraph 4 says the following:

“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.”

- 16. In addition, the holding deposit does not need to be repaid where the provisions of paragraph 9 apply. Those read as follows:

“Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and—

- (a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or

- (b) the landlord is reasonably entitled to take the tenant’s action in providing false or misleading information into account in deciding whether to grant such a tenancy.”

- 17. The deposit also does not, in general, have to be repaid where an exemption applies, being amongst other provisions:

- i) The tenant notifies the landlord or letting agent before the deadline for agreement that they have decided not to enter into the tenancy agreement (paragraph 10);

- ii) The landlord and/ or letting agent has taken all reasonable steps to enter into the tenancy agreement before the deadline for agreement but the tenant has failed to take all reasonable steps (paragraphs 11 and 12).

- iii) However, and notwithstanding the above paragraph, the holding deposit must, pursuant to paragraph 13, still be repaid firstly where the person holding the deposit considers that one of the exemptions applies but fails to give the tenant notice in writing within the relevant period (essentially seven days) explaining why it is not to be repaid (paragraph 5(2)), or secondly where (paragraph 13):

- 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 letting agentbehaves towards the tenant, or a person who is a relevant person 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”.
18. Statutory guidance has been issued by the Minister of Housing, Communities and Local Government but need not be recited here.

THE PARTIES’ CASES

19. The Applicant’s paper case on the Claim Form states that he made an offer to rent the Property, which was accepted, and that he was asked to pay a holding deposit. he paid that, of £420 but then failed referencing and sought the return of the holding deposit. The Respondent (or whatever entity ought to be the Respondent, from here onwards simply “the Respondent” to cover both) returned 50%, so £210, as a goodwill gesture but not the entirety.
20. None of that is in dispute.
21. The Applicant did not, as mentioned above, provide any witness evidence. Nor indeed any other supporting evidence, for example by way of documents.
22. The Respondent’s case (or the case of whatever entity ought to be the Respondent) is that the holding deposit was no more than one week’s rent for the Property (the monthly rent being £1850) and that referencing failed due to lack of verification of the employer reference plus it being considered by the reference agency, called Rent 4 Sure, that bank statements had been “tampered with”. The Respondent says that it sought to verify the employer itself but found the sole director to be the Applicant’s partner, who it appears to say had arranged payment of the deposit.
23. Some further detail was provided in a witness statement of Mr Neil Prince dated 6th July 2023 containing an appropriate statement of truth. In addition, various supporting documents were provided, including the outcome of the credit referencing.

THE HEARING

24. The hearing proceeded by video as directed, commencing at 10am. The Judge sat at Havant Justice Centre.
25. There was no attendance by either party at 10am. By 10.15, there was still no attendance and hence the hearing was called on, the lack of attendance was noted and the hearing concluded.

26. At 10.28, an email was received by the case officer which stated (set out below exactly as received) as follows:

“Dear sirs sorry having trouble attending this meeting as we are not that good at i.t and or not sure if our computer is capable. We did attend the court in person back in October and we were the only party to turn up so hopefully this demonstrated our genuine attempt to put our case forward. Hopefully the case notes you have and our attending in person last year will be sufficient to make a judgement this morning. Apologies again and would be willing to come to court if necessary. Regards Neil Prince CONNORPRINCE Estate Agents”

27. There is nothing in the email to indicates any attempt to contact the Tribunal with regard to any IT issues and to identify whether those could be resolved. All else failing, parties can join by telephone. Whilst receipt of the email after the event to explain the lack of attendance is of modest use, it is a little better than nothing at all.

28. The Tribunal would have heard from Mr Prince had he attended at the time required. However, there had, as explained below, been no challenge made by the Applicant to anything said on behalf of the Respondent and the Respondent’s case was in clear terms, such that in the event nothing turned on the lack of attendance my Mr Prince.

29. Nothing at all was received from the Applicant to explain his non-attendance.

CONSIDERATION

30. The Tribunal considers that it would be entitled to dismiss the application on the basis of the Applicant’s lack of attendance and without further, given the terms of the Directions and the failure of the Applicant to attend. Whilst there was also non- attendance by the Respondent, it was not the Respondent’s application.

31. The Tribunal considers that it may also be entitled to dismiss on the basis that the Respondent as named is not obviously a legal entity and the Applicant failed to address that, despite the point being flagged up in the Directions. The Tribunal considers that it cannot make an Order against a name without a legal identity in any event.

32. In the circumstances, any question of whether the respondent ought in any event properly to be the correct agent or the landlord specifically is not required.

33. On balance the Tribunal determined that it would also consider the case on its merits and so now briefly does so.

34. The Tribunal accepts that the holding deposit requested was of a level which properly could be requested and so was a permitted payment.

35. In terms of the entitlement to retain the holding deposit, firstly, the documentation attached to Neil Prince's witness statement indicates that an offer of a tenancy was made on 19th June 2023 and that appears to have been accepted the same day- there is a signed application, although the date of 19th June 2023 on that is typed and so it not clear whether the form went out to the Applicant containing that date or whether the Applicant added that in type albeit that the signature appears to be an ink one.
36. The reference check is identified as being started on 20th June 2023 and completed on 23rd June 2023. The Respondent informed the Applicant later on 23rd June 2023 of the inability to proceed further with the tenancy application. Very swiftly after that the Applicant requested the return of the holding deposit. A few minutes after that- and still the same business day as the refusal- the Respondent explained the reason why the holding deposit was not to be returned (in full), namely the referencing failure and the related costs incurred. The refund of half as a goodwill gesture was stated.
37. The Tribunal accepts that as notice of the reason why the holding deposit was not to be returned (in full) and that it was provided comfortably within seven days.
38. The relevant question to which the case therefore condenses is therefore whether the deposit was retained for a reason permitted. The Act provides, as noted above, that if the landlord decides before the deadline for agreement not to enter into a tenancy agreement, the holding deposit must be repaid unless particular circumstances apply.
39. It is clear that the landlord (or agent) decided not to enter into the tenancy. However, the exception at paragraph 9 of the Schedule applies, namely the ability to take into account the difference between information provided and the correct information or to take into account false or misleading information, is relevant.
40. The Tribunal does not consider the Applicant's failure to inform the Respondent that he was employed by a company of which his partner is the sole director is of itself the provision of false or misleading information. If the Applicant had said something about his employment which was incorrect- a positive act rather than omitting something- that would be another matter.
41. In respect of the tampering with bank statements, the Tribunal notes that at no point has the Applicant sought to refute that allegation.
42. The Applicant said by email dated 24th June 2023 that he had taken advice and had been told that the 50% of the holding deposit not repaid could not be retained. There was no indication of what information or documentation he had provided to the advisor.

43. However, not even that email says that he did not tamper with bank statements. Implicitly, the Applicant by failing to challenge the allegation admits or accepts that the allegation is correct.
44. The Respondent, through Debbie Cole, replied by email explaining that:

“Your reference failed for reasons which were not disclosed at the point of your tenancy application and this is one of the few reasons that a landlord or letting agent is entitled to withhold return of a tenancy holding deposit.”
45. In broad terms that is an accurate statement of the relevant law.
46. The Tribunal has the witness statement of Neil Prince containing a statement of truth and, whilst that is less full about the point than ideal, the Tribunal is entitled to and does accept the contents of the statement as correct. The Tribunal also accepts the contents of the Respondent’s emails referred to as correct as to the reason not to repay.
47. The Tribunal determines that the landlord was, through her agent the Respondent, entitled to take into account false or misleading information. The Tribunal further determines that having done so, the landlord, through her agent the Respondent, was entitled to refuse to return any of the holding deposit for that reason (albeit that only half of that holding deposit needs to be considered in the event).

DECISION

48. The Applicant has not demonstrated that he is entitled to the return of the balance £210 of the holding deposit originally paid of £420.
49. The Application accordingly fails.

INTEREST AND FEES

50. I record for the avoidance of doubt that the provision in the Tenant Fees Act does not provide for any claim for interest on any sum determined to be repayable. The Applicant’s claim for interest sought to be brought in the County Court on any sum awarded to him would necessarily have failed in any event.
51. Likewise, the claim for the £35.00 fee payable to issue proceedings in the County Court fails. If the case had been issued in the correct forum, the Tribunal, no fee would have been payable. The Applicant cannot recover a fee incurred because of issuing in the wrong forum which would not otherwise have been incurred.

Rights of Appeal

1. A person wishing to appeal decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.