



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

Case reference : **LON/00AK/HTC/2023/0022**

Property : **5 College Close, London, N18 2XS**

Applicant : **Ayaan Omedo**

Representative : **N/A**

Respondent : **Bart Tomaszewski**

Representative : **N/A**

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

Tribunal members : **Judge H Carr**

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

Date of decision : **8th April 2024**

DECISION

Order

The tribunal makes the following Order, pursuant to section 15 of the Tenant Fees Act 2019 (“the Act”):

- (1) On or before 26th April 2024, the respondent Flatshare Management Company Ltd shall re-pay the applicant the amount of £45 paid in respect of the holding deposit for **5 College Close London N18 2XS**
- (2) In accordance with section 15(11) of the Tenant Fees Act 2019, such Order is enforceable by order of the county court as if the amount payable under the Order were payable under an order of that court.

The application

1. This is an application dated 22nd November 2023 for an order for the recovery of a holding deposit paid in respect of a tenancy of 5 College Close London N18 2XS pursuant to section 15 of the Tenant Fees Act 2019.
2. The information from the parties confirms that the respondent received payment of £200 from or on behalf of the applicant but that despite requests from the applicant the respondent has not repaid the outstanding sum.
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. The applicant also alleges that the amount of holding deposit paid exceeded the statutory limit.
4. The Tribunal gave directions on 26th January 2024. 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 the tribunal therefore determine the matter on basis of documents provided by both parties.

The facts

5. The applicant says that he viewed a room to rent at the property on 16th November 2023. The respondent asked him to pay £200 holding deposit to reserve the room and told him that if he changed his mind and decided not to rent the room his money would not be refunded.

The applicant paid the respondent £200 on 17th November 2023 to reserve the room.

6. The applicant was due to move into the room on 20th November 2023 and to pay a month's rent of £675 and the deposit totalling £1350. The applicant says that the tenancy did not go ahead because Bank transfer times are three to five working days and he did not have enough time to clear the money.
7. He asked to start the tenancy 3 – 5 days later when the rent and deposit would be transferred. The estate agent for the property said that this was not possible following instructions from the landlord.
8. When the applicant asked for his holding deposit back on 21st November 2023 the respondent said that he could not have the money back. The respondent told him that the money should have been in its account by the move in day of 20th November. The applicant says that the respondent told him he could have brought cash with him but he did not. The respondent told him that as far as he was concerned the applicant was not ready to take the room.
9. The applicant went to his local council, the London Borough of Enfield and a housing officer there, Janet Moona asked the respondent if he could offer the applicant another property. The respondent said that the applicant was untrustworthy and unreliable, and he would not rent the applicant any of his properties.
10. The applicant says that the failure to repay the holding deposit is not permitted under the Tenant Fees Act 2019. He also says that the holding deposit was too high. The maximum holding deposit was £165 which was one week's rent but he paid £200.
11. The respondent says that the applicant is not entitled to the return of the money. This is for two reasons.
12. The first reason is that the payment was received by Flatshare Management Company Ltd and the monies were never in any account or handled directly by the respondent personally. He was acting in his capacity as the director of Flatshare Management Company Ltd. As such the respondent says he should not be personally liable for any sums due. The contract that was entered into was between the applicant and the company Flatshare Management Company Ltd. He therefore considers that the applicant's claim is misconceived and should be struck out.
13. Secondly he says that he sent the applicant an email on 16th November 2023 which set out the terms of the AST. The applicant was to sign the paperwork on 20th November 2023 and move in that same day. The

respondent also informed the applicant that as soon as the payment of £200 was received the room would no longer be available and further viewings would be discontinued. The respondent says he kept the room vacant for the applicant to move into on 20th November 2023.

The law

14. The law is set out in the Tenant Fees Act 2019. The Act prohibits payments which are not permitted payments under the legislation.
15. The applicant is a “relevant person” by virtue of being a “tenant”: see section 1(9) and section 28 (interpretation of “tenant”).
16. The respondent is a landlord by virtue of section 28 (interpretation of “landlord”).
17. A holding deposit paid to a landlord 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).
18. 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.
19. 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.
20. 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.
21. 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).

22. The landlord is also required to provide a notice in writing explaining why the person who received the holding deposit intends not to repay it. to repay the holding deposit: Schedule 2 para 5(b). That notice must be given within a period of 7 days beginning with the date on which the landlord decides not to enter the agreement.

Discussion and conclusion

23. The tribunal notes the respondent’s argument that he is not the appropriate respondent for the application. The tribunal has considered the communications between the parties and determines that it is not made clear by the respondent who the landlord of the room is. What is clear is that the respondent is a director of the company that he says should be the proper respondent and the email communication indicates that he is a directing mind of that company.
24. In these circumstances the tribunal determines not to strike out the application. Instead, using its powers under Rule 10 of its procedural rules, and bearing in mind the overriding objective that the tribunal deals with the case in a proportionate manner avoiding unnecessary formality, the tribunal determines to add Flatshare Management Company Ltd as a second respondent in this matter.
25. In the tribunal’s judgment, the amount of the holding deposit over and above one week’s rent is repayable as the amount over that rent is a prohibited payment
26. There is some confusion in the paperwork provided about the monthly rent. In the initial email from the first respondent the rent is set out as £675 per calendar month including bills with a deposit of £675. However in the same email there is a reference to the rent being £685. In the light of the conflicting evidence, and because the applicant understood the rent to be £675, the tribunal finds that the rent agreed was £675 per month. One week’s rent is therefore £155 ($£675 \times 12 \div 52$). Accordingly, the limit for the holding deposit is £155. Therefore £45.00 is repayable.
27. The remaining moneys paid by the applicant as a holding deposit is not repayable. This is because by failing to ensure that he paid the initial month’s rent and deposit by the commencement of the tenancy into the account of the landlord company the applicant has failed to take reasonable steps to finalise the agreement. The applicant argues that the landlord should have been prepared to wait a further three to five days but the tribunal accepts that it was reasonable for the landlord to refuse to do so as there was no certainty that the moneys would be in

the relevant account at that date and the landlord would suffer loss as a result of a failure to let the property.

28. The tribunal finds that the email sent to the applicant from the respondent following his request for return of his holding deposit is sufficient to satisfy the requirement upon the landlord to provide reasons for non-repayment of the holding deposit as set out in paragraph 5(1) (b) of Schedule 2 to the Act. There is no prescribed notice for the provision of reasons and the tribunal considers that the email is sufficiently clear in explaining why the holding deposit is not to be returned.

The tribunal's decision

29. The tribunal determines that the payment of £44.00 is a prohibited payment under the Tenant Fees Act 2019 and orders that it be repaid.

Name: Judge H Carr

Date: 8th April 2024

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).

Relevant provisions from the Tenant Fees Act 2019

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 2

Treatment of holding deposit

Application

¹This 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) 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.

Exceptions

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.

7 If all or part of the amount of the deposit is applied in accordance with paragraph [6\(b\)](#), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.

8 Paragraph [3\(b\)](#) or [\(c\)](#) does not apply if—

(a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,

(b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and

(c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.

9 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.

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.