



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

Case reference : **LON/00AM/HTC/2023/0021**

Property : **16 Daubeney Road, London, E5 0EF**

Applicant : **Sheldon Kaplan**

Representative : **N/A**

Respondent : **BlakeStanley**

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 shall re-pay the applicant the amount of £21.60 paid in respect of a prohibited payment relating to **16 Daubeney Road, London E5 oEF**
- (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 prohibited payment paid in respect of a tenancy of 16 Daubeney Road London E5 oEF pursuant to section 15 of the Tenant Fees Act 2019.
2. The parties agree that the respondent asked for and received a payment of £21.60 from the applicant who had been the tenant of the property. Despite requests, the agents have not repaid the money and deny any liability to do so
3. The applicant alleges that the payment is a prohibited payment within the meaning of the Tenant Fees Act 2019 and is liable to be repaid.
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 the papers.

The facts

5. The applicant says that he was the previous tenant of the property. When his lease expired in October 2023 he chose not to renew. He was then told by Nathan Arnold, the Lettings Coordinator at the respondent that he was required to pay his share of a change of tenants fee of £64.80.
6. The applicant paid £21.60 as his share of the change of tenants fee. At the time of the payment the applicant says that he explained that the

charge was in violation of the Tenant Fees Act 2019. The applicant says he explained to the respondent that he was not changing tenants in the middle of a lease. The lease had come to an end, and he did not renew. Therefore, the applicant should not be liable for a change of tenants fee.

7. Nonetheless the respondent required the fees to be paid. The applicant paid the fee on September 19th 2023. On 14th November 2023 the applicant told the respondent once more that the fees were not lawful and that he required a refund. He asked them to provide this before 20th November 2023, and that if they failed to refund the fee he would seek recovery via a FTT.
8. The applicant says that the respondent told hm that it did not retain the fees, that they were charged at the request of the Landlord. The respondent maintained that it was within its right to charge them.
9. The applicant included in his bundle an email sent by one of the incoming tenants, Mr Charles Bishop to the respondent, copying in the former tenants and the incoming tenants. This email sets out MrBishop's understanding of the legal position.

1. There are currently four tenants under a joint fixed-term assured shorthold tenancy.
2. The fixed term of the AST ends on 30th September 2023
3. Ordinarily, under s.5 of the Housing Act 1988, a period tenancy would arise from 1st October 2023. As you knw, the landlord cannot bring that tenancy to an end without serving notice under section 212.
4. However, in this instance the tenants have indicated that, on conclusion of the fixed term, the tenancy will come to an end. There is no requirement to give notice in this circumstance, but they have given notice to you. Where there is a joint tenancy, absent specific provision in the contract notice may be served by just one of the tenants. This has been the recognised legal position for quite some time (see the decision in *Hammersmith and Fulham LBC v Monk* [1992] 1AC 473).
5. The landlord is offering a new assured shorthold tenancy to Dugald plus the new tenants from 1st October 2023. In such a situation section 5(4) has the

effect that the periodic tenancy mention above does not arise.

6. The Tenant Fees Act 2019 does not permit a payment in those circumstances. This is not a variation, assignment or novation of a tenancy under paragraph 6 of Schedule 1 because there is a new tenancy; the old tenancy is coming to an end. Similarly clause 5.6 simply doesn't apply.
10. The tribunal notes that Mr Bishop says he is a barrister who practices landlord and tenant law.
11. The respondent says that it is reasonable to ask the applicant to pay for referencing of a replacement tenant on a jointly liable tenancy agreement and that £21.60 per application is a fair cost for this. The respondent says that in these circumstances it should not have to refund the amount claimed by the applicant.
12. The respondent explains the chronology of events. On first October 2022 the applicant long with three others signed an Assured Shorthold Tenancy Agreement.
13. On 12th July one of the tenants, Dugald Eldon Johnson advised the respondent that he would like to renew the tenancy. The other tenants wished to vacate.
14. The respondent says that if one or mor tenants do not wish to renew, then the landlord allows change of occupants to take place but only on the basis that the cost of referencing of the new tenants is borne by the departing tenants. The respondent keeps this cost as low as possible. It uses a third party who charges £18 plus VAT.
15. The respondent says that it did not charge any retainable fees to process the change of occupants. The payment was not for a holding deposit but for their party tenant referencing. The respondent says that the guidance for Landlords and Agents and the Tenant Fees Act 2019 allows this. This information has been provided to the applicant and the other departing tenants.
16. The respondent includes in its bundle its communications with the applicant and his fellow tenants. On 23 August 2023 Mr Arnold wrote an email confirming that the landlord was happy to proceed with the change of occupants' process. The email included the following with some sections highlighted in bold type,

To reiterate, notice to terminate the tenancy can only be served by ALL TENANTS and cannot be served or accepted by just one tenant. If all tenants are not serving the required notice, then this is classed as a change of occupancy only. All existing tenants remain joint and severally liable for the rent and the terms of the contract until the **whole process** has been carried out and a new Tenancy is signed.

17. On 14th September 2023, in response to the email from Mr Bishop, Ms Jordi Mestan on behalf of the respondent wrote to the applicant, the other former tenants and the incoming tenants to confirm that the fee is required. Included in that email is the following.

I note, that I previously also liaised with our Legal Team and they have confirmed having reviewed the information from legislation.gov.uk and the Tenant Fee Act 2019 – Guidance for Landlords and Agents that we are correct and within our rights to propose the cost of the incoming tenants reference fee of £18.00 plus VAT. They also referred to page 54 in the Tenant Fee Act 2019 -Guidance for Landlords and Agents (Page 69 in the tenants guidance) and I have attached a copy of this for you too alongside the tenants Guidance.

Please note, you are all joint and severally liable for the tenancy agreement terms, property and rent until the Change of Occupants process has been completed and a new tenancy agreement is signed. It is a breach of tenancy if anyone who is not named on the tenancy agreement resides in the property without a new agreement signed or permission via Blakestanley or the owner.

The law

- (i) The law is set out in the Tenant Fees Act 2019. The Act prohibits payments which are not permitted payments under the legislation.
- (ii) The Act permits a number of payments, including at Paragraph 6(1) payments on variation, assignment or novation of a tenancy.

18. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Discussion and conclusion

19. The tribunal notes that the tenancy is a fixed term tenancy which expired on 30th September 2023. The applicant is a former tenant of the tenancy which has expired. The tenancy under which the respondent is purporting to demand payment is not longer in existence but a new tenancy has arisen. The applicant is not a party to that tenancy.
20. It agrees with the analysis of Mr Charles Bishop. In the particular circumstances of this case, the tenancy has been terminated either by service of notice by the tenants or by expiry of the fixed term.
21. A new tenancy has been created, comprising one of the original tenants and the three new tenants. .
22. In these circumstances the provisions of paragraph 6(1) of Schedule 1 does not apply because the payment that was required by the respondent is not a payment on variation assignment or novation of a tenancy. The relevant tenancy has been terminated and a new one has arisen to which the applicant is not a party.

The tribunal's decision

23. The tribunal determines that the payment of £21.60 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 1:

Payment on variation, assignment or novation of a tenancy

6(1) A payment is a permitted payment if it is a payment—

(a) to a landlord in consideration of the variation, assignment or novation of a tenancy at the tenant's request, or

(b) to a letting agent in consideration of arranging the variation, assignment or novation of a tenancy at the tenant's request.

(2) But if the amount of the payment exceeds the greater of—

(a) £50, or

(b) the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy,

the amount of the excess is a prohibited payment.