



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

Case Reference : **CHI/00HD/HTC/2023/0007**

Property : **Flat 3, Portland Court,
Portland Square, Bristol,
BS16 4NU**

Applicant : **Jason Durrant**

Respondent : **Curtis Adams**

Type of Application : **Section 15, Tenant Fees Act 2019**

Tribunal Members : **Judge Dovar
Mr Paul Smith FRICS**

**Date and venue of
Hearing** : **30th April 2024, Havant / Remote**

Date of Decision : **8th May 2024**

DECISION

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1. This an application under s.15 of the Tenant Fees Act 2019 in respect of a holding deposit paid by Mr Durrant to Mr Adams in respect of the rental of the Property from December 2019 to December 2022.
2. The Act prohibits certain fees being paid in relation to tenancies. The Act distinguishes between permitted payments and prohibited payments. Section 15 allows a person who has made a prohibited payment to make an application to this Tribunal for an order requiring its return. The same applies in respect of holding deposits which have not been held in accordance with the Act.
3. Holding deposits are generally paid prior to the parties entering into a tenancy and as a form of guarantee that the prospective tenant will enter into a tenancy, so as to give some comfort to the landlord in taking the property off the market whilst formalities are sorted out.
4. Paragraph 3 (2) of Schedule 1 however describes a 'holding deposit' as *'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).'*
5. Further paragraph 3 (3) limits the amount of a holding deposit to no more than the equivalent of one week's rent. Any more paid under that heading is a prohibited payment.

6. Schedule 2 makes various provisions as to how long a holding deposit can be held. By paragraphs 3 and 4 it must be repaid if the parties enter into a tenancy agreement, within 7 days of the date of that agreement.
7. In this case Mr Durrant claims he paid a holding deposit to Mr Adams prior to entering into a tenancy of the Property. He relies on a bank statement showing a payment of £350 to 'Curtis' being Mr Adams in December 2019. He also relies on a text exchange prior to that in which Mr Adams states on 2nd December 2019, *'Morning bud just a quick one flat should be finished later just need to give it a clean. Can you give me a holding deposit pls as I normally take one to secure the flat ...'* he later on confirmed that it was £350.
8. Shortly prior to the hearing, Mr Adams emailed the Tribunal regarding the hearing, saying that he had not returned the deposit as the Applicant had left the Property in a poor condition. It was pointed out to him by the Tribunal that that was irrelevant if this was a holding deposit. If he was contending that this was in fact a tenancy deposit then he should provide evidence of the same. Instead of providing any evidence, he responded saying that this was a tenancy deposit being less than half of the monthly rent of £725.
9. Mr Adams did not attend the hearing, although the Tribunal was satisfied, not least from his email correspondence that he was aware of the hearing. Mr Durrant did attend. He confirmed that the monthly rent was £725, but denied this was a tenancy deposit. He also confirmed that there was no written agreement and that he had checked with all three of

the tenancy deposit scheme providers and none had recorded any deposit from him at the Property.

10. The Tribunal is satisfied that this was a holding deposit within the meaning of the 2019 Act. The exchange set out above makes that clear. The sum is also more akin to a holding deposit than a tenancy deposit given that it bears no real relation to the monthly or weekly rent. Further if this was a tenancy deposit then Mr Adams would face more stringent penalties for non-compliance with the provisions of the Housing Act 2004.
11. In the event that Mr Adams never intended to hold the money in accordance with Schedule 2 of the 2019 Act, the whole sum would be a prohibited payment. In the event that he did, then it still exceeded the permissible amount, and so part would have been a holding deposit and part a prohibited payment. In either event, Mr Durrant is entitled to the return of £350.
12. Accordingly the Tribunal orders that Mr Adams pays Mr Durrant the sum of £350, to be paid by 5pm on 16th May 2024.

Judge Dovar

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.