



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

Case reference : **LON/00AJ/HTC/2024/0003**

Property : **11 Heathfield Road, London W3 8EH**

Applicants : **Mr Noah Hardwicke**

Representative : **N/A**

Respondents : **Ms Henryka Senet-Larson**

Representative : **N/A**

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

Tribunal member : **Judge Tagliavini**

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

Date of decision : **11 June 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal directs the respondent to repay to the applicant the sum of £800 within 7 days of this decision being sent to the parties.
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The application

1. This is an application for an order for the recovery of a holding deposit in respect of a proposed tenancy of **11 Heathfield Road, London W3 8EH** ('the property') pursuant to section 15 of the Tenant Fees Act 2019 ('the 2019 Act').

The background

2. The applicant's case is that during negotiations for the room, the landlord failed to disclose a clause requiring a payment for any guests that stayed in the property, and despite requests, the £800 deposit paid by the tenant has not been returned. The tenant says that the landlord has reclassified the deposit as a business (diverging) expense. The dispute therefore concerns the £800.00 paid.

The applicants' case

3. In his application form, the applicant states he viewed the room at 17:00 on 10/11/23 and expressed interest in renting it at 19:29 the same day. Ms. Senet-Larson instructed me to pay a £800 deposit in order for viewings to cease and to provide a passport copy for contract preparation. The deposit was paid on either the 11th or 12th November 2023 and receipt confirmed. Upon receiving the contract, the applicant I found an undisclosed clause which stated:

'A guest is welcome and is charged £30 per night.'

4. The applicant requested a modification to the clause, but Ms. Senet-Larson refused. Within two days of 12th November 2023, the applicant declined to proceed with the tenancy and requested a reasonable amount of the deposit be refunded.
5. Ms. Senet-Larson's response suggested the refund depended on finding a new tenant. On 11/12/23, she proposed retaining £500 for December's vacancy, requesting my bank details for the remaining £300. I consulted Citizens' Advice, who highlighted that the holding deposit exceeded legal limits under the Tenant Fees Act and that the guest charge

clause seemed unlawful. I explained this to Ms. Senet-Larson who then Ms. Senet-Larson then classified the deposit as "business diverging" due to not signing the contract and claimed a business loss for December.

5. The applicant then demanded a full refund and the respondent's response included false claims about previously disclosing the guest charge and showing the contract during viewing.

The respondents' case

6. In an email response dated 4 March 2024, the respondent stated there has never been relationship lodger-landlord with the applicant, as no rent contract was signed. The plan of renting a bedroom at my property was changed by Mr Hardwicke after 3 days of paying £850 as a booking fees obliged me to cancel 3 other viewings scheduled for the next couple of days.

7. The respondent assert that because Mr Hardwicke has changed his mind (the template of contract was presented to him during his viewing), I advised him that the booking fees will be decreased by £100 if I find the lodger from the 1st of December 2023. Unfortunately I was able to find a lodger only from the 1st of January 2023, that is why I have proposed to Mr Hardwicke reimbursement of his booking fees at the amount of £300 (I have lost 1.5 month of rent @ £1350 per month because of Mr Hardwicke's change of mind). He has never sent me his bank details despite my numerous requests.

Reasons for the tribunal's decision

8. The relevant parts (in **bold**) of Schedule 2 (holding deposit) of the 2019 Act state:

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.

8. The tribunal finds as the landlord (respondent) and tenant (applicant) failed to enter in an agreement by 26th November 2023, being the deadline for the agreement, paragraph 2(1) of Schedule 2 applies. Therefore, the holding deposit is repayable in full by the respondent by 26th November 2023.
9. The tribunal directs the respondent to pay to the applicant the sum of £800 being the sum paid by way of a holding deposit and is a prohibited payment of Schedule 2 of the 2019 Act.

Name: Judge Tagliavini

Date: 11 June 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).