



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

**Case reference** : **LON/00BG/HTC/2024/0005**

**Property** : **Flat C, 57-59 Wentworth Street, London  
E1 7TD**

**Applicants** : **Marcus Laurie Thomson  
Sophie Qi Fei Rolph**

**Representative** : **N/A**

**Respondents** : **Greenhill Investments Ltd T/A  
Winkworth Shoreditch for the landlord  
Lazlo Biro**

**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**

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**DECISION**

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## **Decisions of the tribunal**

(1) The tribunal directs the landlord Lazlo Biro and/or the agent Greenhill Investments Ltd T/A Winkworth Shoreditch are to pay to the applicants the sum of **£2,252.06** within 21 days of this decision being received.

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## **The application**

1. This is an application for an order for the recovery of a prohibited payment under subsection 15(3) and (5) of the Act and subparagraph 7(4) of Schedule 1 of the Act, because it is said it exceeded the reasonable costs of the letting agent in respect of the termination of the tenancy. The tenant seeks recovery of part of £3,577.08 in respect of a proposed tenancy of Flat C 57-59 Wentworth Street, London E1 7TD pursuant to section 15 of the Tenant Fees Act 2019 calculated as:-

- (i) From the Agent, the sum of £2,252.06, minus their reasonable costs as assessed (which the Applicants say is zero or close to zero); or
- (ii) From the Landlord the sum of £2,252.06; or
- (iii) From the Landlord the sum of £2,252.06, minus the Agent's reasonable costs as assessed (which the Applicants say is zero or close to zero); and
- (iv) An order that Agent or Landlord repay the Applicants £1,325.02 for breach of their duty to mitigate losses

## **The background**

### **The applicants' case**

2. The applicant's case is that they entered into an assured shorthold tenancy in respect of the property for a period of 24 months with a break clause at 12 months at an initial rental of £2,800.00. The applicants assert that in November 2023, they requested an early termination of the agreement. The landlord agreed to this on condition that the applicants adhered to the agents early termination process. The applicants subsequently paid the sum of £3,577.08 in respect of fees for the early termination of their tenancy agreement.

3. The terms were set out in an email dated 6 November 2023 from Winkworth Shoreditch and stated:

The terms are as follows:

(1) You are responsible for the rent, bill and all other contractual obligations until a new tenant takes possession of the property.

(2) Due to market conditions, the rent achieved from new tenants may be lower than the £2800pcm you pay currently and so you would be required to compensate up to this amount depending on the rent achieved from the new tenants.

(3) If a new tenant were to move in on 02/12/23, the fee that is to be reimbursed to the landlord is calculated at £1,881.60 inc VAT (7 months' worth of tenancy left). The monthly fee rate is £268.80 inc VAT and so if you vacate the property with 7 months remaining then the fee to be reimbursed would be £1,881.60 (7 x 268.00).

(4) You must also pay for admin and referencing costs that the landlord incurs as a result of having to find a replacement early. (£75 per tenant reference and £300 admin fee).

(5) The compensation due will depend on how soon you would like to vacate, so if the date is later than 02/12/23 then the compensation would reduce."

4. The applicants assert that they did adhere to the process in respect of the early termination of the tenancy. The applicants now assert the amount claimed by the landlord/agent is excessive and prohibited under the 2019 Act. The applicants accept the agent had costs to cover and had to carry out work, commit resources and perform administration and work in setting up the future tenancy. However, they submit a commission-based fee, provided for by a contract to which the applicants were not privy, is an unlawful basis on which to value those services.
5. The applicants asserted the Agent is permitted by the Act to claim their reasonable costs but the issue of 'reasonableness' does not depend on the agency agreement, nor does it relate to any kind of "pro rata" assessment. Reasonableness" does not depend on the Agent's belief as to the market value of their services to their clients, or on any comparison to other letting agents' fees. Nor does the reasonableness of the Agent's fees depend on the reason for termination as whatever the case, the Agent will perform the same services.
6. Similarly, the applicants' opinion as expressed in reviews is not relevant in determining the value of the Agent's services. The fact that the applicants left positive Google reviews for the Agent is therefore irrelevant to the determination of this dispute. Nevertheless, by way of explanation, we left the reviews at the request of the Agent before our

bond had been returned. We were concerned that we could be treated unfavourably if we did not comply with their request and felt relatively powerless in the circumstances. We did whatever we could to keep the Agent happy until we had received our bond back.

7. The applicants also asserted the Agent may claim a reasonable fee that is based wholly on actual services rendered. Previous First-tier Tribunal decisions referred to in the application offer good examples of how such services may be particularised and valued. However, in this case, the Agent has made no claim of that kind, except for the landlord administration fee and tenant reference fees, which it has now waived.

### **The respondents' case**

8. Greenhill Investments T/A Winkworth Shoreditch provided a response to the application in which it rejected the applicants' claims and state the fees claimed were in accordance with Paragraph 7 of Schedule 1 of the Tenant Fees Act 2019 and a permitted payments as it is: –
  - (i) Payment on termination of a tenancy. The payment was requested from the Applicants to compensate our Clients' losses suffered as a result of their early termination of their tenancy during a fixed term before the end of that term.
9. The respondents asserted that Winkworth was instructed by the landlord Mr Laszlo Biro on the 24th April 2023 to begin marketing his property Flat C, 57-59 Wentworth Street, London E1 7TD for let. The terms of business and service fees were agreed between the parties. Greenhill Investments Ltd were appointed as Managing Agent. The applicants and Mr Biro entered into an Assured Shorthold Tenancy on the 3rd of July 2023 for a period of 24 months with a 12 month break clause. Mr Biro paid Winkworth fees for the letting service.
10. Subsequently, the applicants and Mr Biro met 5 months after the tenancy commencement in November 2023 and discussed the possibility of an early termination of the tenancy. No mitigating circumstances for the early termination were given by the applicants. Mr Biro provisionally agreed to an early determination subject to consultation with the Agent and adherence to their early termination process confirmed between Winkworth and the applicants on the 6th November 2023.
11. The property was put back on to the market on the 14th November 2023 and a new tenancy agreed on the 16th November 2023. This new tenancy began on the 15th December 2023 at a monthly rent pf £2,600 pcm and therefore £200 pcm lower than the applicants £2800 cm rent payable.. On the 5th December, the applicants paid £3577.08 to Winkworth which was then transferred to Mr Biro.

12. The landlord's revised losses were calculated as:

7 months letting fees (£268.80pcm inc VAT) - £1802.60

Difference in rent achieved (£200 pcm loss) - £1325.02

**£3127.62**

13. It was accepted by the respondents there had been errors made on the part of the managing agent in relation to the Landlord Administration and Tenant Reference costs quoted (those being £300.00 and £150.00 respectively). These amounts are our standard rates for those elements of our fees and this landlord is on reduced fees of £185.00 and £120.00 which should have been factored into the calculations for the early termination costs reimbursed to the Landlord. Due to this error, this recalculation generated a refund to the applicants of £450.00 and was made on the 3rd of May 2024. Consequently, in respect of the application this will leave an amount of **£3127.62** remaining in dispute.

### **The reasons for the tribunal's decision**

14. Paragraph 7 of Schedule 1 of the Tenants Fees Act 2019 states:

*7(1)A payment is a permitted payment if it is a payment to a landlord in consideration of the termination of a tenancy at the tenant's request—*

*(a)in the case of a fixed term tenancy, before the end of the term, or*

*(b)in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law.*

*(2)But if the amount of the payment exceeds the loss suffered by the landlord as a result of the termination of the tenancy, the amount of the excess is a prohibited payment.*

*(3)A payment is a permitted payment if it is a payment to a letting agent in consideration of arranging the termination of a tenancy at the tenant's request—*

*(a)in the case of a fixed term tenancy, before the end of the term, or*

*(b)in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law.*

*(4)But if the amount of the payment exceeds the reasonable costs of the letting agent in respect of the termination of the tenancy, the amount of the excess is a prohibited payment.*

*(5)In this paragraph “fixed term tenancy” means any tenancy other than a periodic tenancy.*

15. It was unclear to the tribunal how the applicants calculated the sum they claimed was a prohibited payment. In any event the tribunal has no jurisdiction to make any award or order that Agent or Landlord repay the Applicants £1,325.02 for breach of their duty to mitigate losses
16. The tribunal finds the landlords loss of letting fees is essentially a ‘double recovery’ as the payment of those fees could reasonably be transferred to the new letting of the premises and do not represent a genuine loss. Therefore, the tribunal finds the fees of £1802.06 forms a prohibited payment and are to be returned to the applicants.
17. The tribunal finds the applicants are not liable for the loss to the landlord for the lower rent charged to the new incoming tenants. Having accepted and early termination of the tenancy, the landlord is liable to mitigate his losses. The applicants cannot be held responsible for the alleged changes in the letting market. Arguably, had the landlord been able to let the subject property for more than the £2,800 pcm they might argue they should have been entitled to receive the difference. In any event the loss of rental income does not represent a loss to the agent pursuant to paragraph 7(4) of Schedule 1.
18. The tribunal accepts the tenant’s reference fee and the landlord administration fee have been reimbursed to the applicants and therefore are no longer in issue.
19. The applicants accept that some (albeit limited) administration fees are payable to the agent for the administration of the early termination of the tenancy. Therefore, doing the best it can on the information provided by the parties, the tribunal directs the sum of £2,252.06 should be paid to the applicants by the landlord and/or agent within 21 days of the date this decision being sent to the parties, This sum represents the proportion of the payments the applicants assert are prohibited.

**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).