



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

Case reference : LON/00AP/HTC/2024/0009

Property : Flat Front GF, 134 Park Lane, London
N17 0JP

Applicant : ~~Peter Mattravers~~
Helena Gorbaczewska

Representative : Peter Mattravers

Respondent : (1) Wasim Ahmad
(2) Zipema Ltd

Representative : Wasim Ahmad

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 : 6 August 2024

DECISION

The tribunal's decision

- (1) The tribunal determines the first and/or second respondents are required to repay to the applicant within 7 days of this decision being sent to the parties, the sum of £323.00 pursuant to paras. 3 and 3(c) of The Tenant Fees Act 2019.
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The application

1. This is an application for an order for the recovery of a holding deposit paid in respect of a tenancy of **Flat Front, GF, 134 Park Lane N17 OJP** ('the property') pursuant to section 15 of the Tenant Fees Act 2019.

Background

2. The applicant asserts that on or around 19 February 2024 the respondent received payment of **£323.00** from or on behalf of the applicant, but that, despite requests, the respondents have not repaid the outstanding holding deposit when the tenancy did not proceed. The applicant also alleges that the landlord harassed and threatened her to withdraw her application so that she would forfeit the holding deposit she paid to Open Rent and that was transferred to the first and or second respondent.

Preliminary Matters

3. The application has been made on behalf of the prospective tenant Therefore the tribunal has exercised its discretion under rule 10 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2019 to substitute the correct applicant who has the legal standing (i.e. being a party to the intended tenancy agreement), to seek the return of a deposit that she has paid is therefore the person entitled to seek its repayment.
4. Although it has been asserted the applicant is a 'vulnerable person' it is unclear what the nature of this vulnerability is, other than unfamiliarity with the English language.

The hearing

5. Neither party requested an oral hearing and therefore the tribunal determined the application on the documents both parties had submitted to the tribunal.

The applicant's case

6. The applicant relied upon her application form and the copies of her electronic messages to the respondents to support her claim. In the application the applicant's representative stated:

My friend Helena Gorbaczewska has limited English and was looking to enter a rental contract on a property, she paid a holding deposit of £323 on 19th February 2024. My wife Ann-Marie Lacy agreed to act as a guarantor, through the website OpenRent. However she was unhappy with the landlord and the terms of the guarantee which meant she would be liable for the rest of her life and that the liability would pass to her children after her death. Ann-Marie attempted to discuss this with the landlord and ask for a limited position of two years, but he refused to change his position or negotiate in any way. As a result she did not feel comfortable going in to an open ended agreement with this individual. The transaction fell through so the holding deposit should have been returned according to the Tenancy Act 2019.

Unfortunately, the landlord used aggressive and harassing behaviour to force Helena to withdraw from the transaction and thus forfeit the holding deposit. As per the attached screenshots he threatened her for a month's rent claiming that he needed to cover costs he had incurred from OpenRent and inventory etc. She has limited English and funds so was very scared about having this liability and eventually did as he ordered by withdrawing from the transaction. This meant that she lost the holding deposit per OpenRent's terms and the Tenancy Act. On raising this with OpenRent their position is that she provided misleading information thus justifying the forfeiture of the rent. Throughout the process Helena acted in good faith and did not seek to deceive the landlord, we provided details of the messages the landlord sent her and the pressure he put to make her withdraw. We are therefore asking for the holding deposit (plus interest) to be returned to Helena.

Even if Helena had provided misleading information the official government advice on the Tenancy Act says that the landlord should only retain the cost of undertaking the reference rather than the full amount of the holding deposit.

It's clear from the attached correspondence the landlord acting in a threatening and harassing manner to prey on a vulnerable person by making untrue statements about her liability

The respondents' case

7. The respondents accepted made a payment of £323 as a holding/reservation deposit for the subject property. Subsequently, the applicant failed to enter into an agreement with landlord/agent for a tenancy and she and/or her guarantor had provided misleading information to or had otherwise misled the first and/or second respondents.

The tribunal's reasons

8. The tribunal finds the following:

- (i) The applicant paid a deposit of £323 in respect of a holding deposit for a tenancy of the subject property.
- (ii) The deposit was paid on or around 19/2/2024 to OpenRent who received it on behalf of the first and second respondents and who subsequently transferred it to the first respondent on or about 25/03/2024.
- (iii) On 20/02/2023 the applicant and/or their guarantor refused to enter into an agreement with the respondents for the tenancy of the subject property as stated by the first respondent's email to OpenRent dated 20/02/2023. In this email the tribunal finds the first respondent indicated his wish to keep the applicant's holding deposit for 'timewasting.'
- (iii) The parties should have entered into a tenancy agreement by 05/03/2024 being the 15th day after the holding deposit had been paid unless the applicant had withdrawn her application before this date.
- (iv) In a WhatsApp message dated 23/02/2024 the applicant's representative requested the first respondent to return the applicant's deposit. This request was repeated on 26/02/2024.
- (iii) The parties failed to enter into a tenancy agreement by 05/03/2024 as the applicant was unable to put forward a guarantor who agreed to the terms of the guarantee included in the lease. Unfortunately, the draft tenancy agreement was not provided to the tribunal. Therefore, the applicant's representatives assertions that the terms of the guarantee were unreasonable or have been correctly interpreted cannot be ascertained by the tribunal.

- (iv) The tribunal finds the respondent's assertion that *'Ms Helena misrepresented herself especially her guarantor Ms Ann Lacy in entering into the tenancy agreement. As per Open Rent terms and conditions the applicant cancelled the application and OpenRent forfeited the holding deposit.*
 - (v) On 22/02/2024 the tribunal finds OpenRent informed the respondents that the applicant had pulled out of the tenancy for the subject property and will forfeit the holding deposit.
9. The Tenancy Fees Act 2019 ('the 2019 Act') sets out what are permitted and prohibited payments that can/cannot be charged by a landlord/letting agent to a tenant or person in connection with a tenancy of housing. Schedule 2 of 2019 Act deals with the treatment of holding deposits the relevant parts of which states:

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.

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.

(emphasis added by the tribunal)

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.

...

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. The tribunal finds that no later than 23/02/24 the applicant had made clear to the respondents she wished to withdraw from the application for the tenancy of the subject property by her request from the return of

holding deposit. The tribunal finds this withdrawal was made before the deadline for the agreement was reached and therefore the applicant was not permitted to withhold repayment of the holding deposit.

11. The tribunal finds the first and or second respondents are required to repay to the applicant within 7 days of this decision being sent to the parties, the sum of £323.00 pursuant to paras. 3 and 3(c) of The Tenant Fees Act 2019.

Name: Judge Tagliavini

Date: 6 August 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).