



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

Case reference : **LON/00BJ/HTC/2024/0006.**

Property : **First Floor Flat, 70 Mayford Road,
London SW12 8SN.**

Applicant : **Claire Penelope Steffert.**

Respondent : **Pritpal Singh Bal acting for Bal Real
Estate Ltd.**

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

Tribunal : **Judge J Pittaway**

Date of decision : **7 August 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 **28 August 2024** the respondent **Pritpal Singh Bal acting for Bal Real Estate Ltd.** shall re-pay the applicant the amount of £323 paid in respect of the holding deposit for **First Floor Flat, 70 Mayford Road, London SW12 8SN.**
- (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.
- (3) The tribunal makes no order as to costs.

The Application

1. This is an application dated 12 February 2024 for an order pursuant to section 15 of the Tenant Fees Act 2019 for the recovery of part of a holding deposit paid in respect of a tenancy of First Floor Flat, 70 Mayford Road, London SW12 8SN.
2. The information from the parties confirms that the respondent received payment of £1000 from or on behalf of the applicant, of which it has repaid £677. Despite requests from the applicant the respondent has not repaid the balance of the deposit paid to it.
3. The applicant alleges that the payment is a holding deposit within the meaning of the Tenant Fees Act 2019 and is liable to be repaid. The applicant also alleges that the amount of holding deposit paid exceeded the statutory limit.
4. The Tribunal gave directions on 24 May 2024. These directed that the matter be determined on paper, with the option for either party to request an oral hearing, which neither party did. The tribunal therefore determines the matter on basis of documents provided by both part.

The applicant's case

5. The applicant viewed the First Floor Flat, 70 Mayford Road on 15 January 2024. It was agreed she would rent one room at the flat from 10 February 2024, to be occupied by herself and her partner, at a rent of £1400 per calendar month.
6. Mr Britpal Singh Bal, acting for the respondent, requested a deposit of £1000 to cancel the other viewings of the room. This was paid on 15 January.
7. Mr Bal the requested that the start date of the tenancy be moved to 11 February.
8. The applicant chased for the tenancy agreement to sign. An agreement was received on 29 January 2024. It contained typographical errors, referred to a term of 6 months rather than the twelve months agreed and gave the start date as 10 February not 11 February. The agreement requested a deposit of £3,576.
9. On 30 January 2024 the applicant informed Mr Bal that she would not be proceeding with the tenancy, due to the errors in the agreement and noting that the deposit requested in the agreement was in breach of the Act. The applicant requested the return of her holding deposit of £1000. On 1 February the applicant wrote to Mr Bal formally requesting the return of the holding deposit by 6 February 2024, with a reminder sent on 5 February. The applicant again requested the repayment of the deposit, in full, to her partner Mr Travis Miles Cornwall.

10. The applicant says that she never expected to receive a ‘sample contract’, and that she did not receive the draft Mr Bal sent through until 15 days after the holding deposit had been paid. The Act requires the parties to use reasonable steps to enter into the tenancy agreement within 15 days of the holding deposit being received.
11. The applicant confirms that she has received two payments from Mr Bal, of £353.85 on 14 February and £323.15 on 21 June 2024.
12. The applicant asked the tribunal to repay the balance of the deposit, court costs and any interest, damages or compensation that the court allows.
13. **The respondent’s case**
14. Mr Bal says that the tenancy agreement that he sent the applicant was a draft. He says that he always requests a deposit of five weeks’ rent, and that the reference to £3,576 was a mistake.
15. Mr Bal says that he took the holding deposit in good faith. He now appreciates that there is a one week limit, and he has therefore returned £677, retaining one week’s rent of £323.
16. Mr Bal submits that a holding deposit of one week is inadequate.
17. Mr Bal included a character reference from the other person who was to rent the second room in the flat at the same time as the applicant.

The law

18. The law is set out in the Tenant Fees Act 2019 (the ‘Act’), the relevant provisions of which are set out in the Appendix to this decision.

Reasons for the tribunal’s decision

19. From the evidence before the tribunal it finds that the respondent has repaid all of the holding deposit except for one week’s rent.
20. The issue before the tribunal is therefore whether it should order the repayment of a holding deposit of one week’s rent.
21. A holding deposit of one week’s rent is permitted as it is not a ‘prohibited payment’ under the Act.
22. Generally a holding deposit is repayable if the landlord and tenant fail to enter into a tenancy agreement before the deadline for the agreement: Schedule 2 paragraph 3(c), subject to certain exceptions.
23. Here the tribunal needs to have regard to the exception to Schedule 2 paragraph 3(c) set out in paragraph 11, which provides that permitted

holding deposit need not be repaid where the landlord has taken all reasonable steps to enter into the tenancy agreement before the deadline for the agreement but the tenant has not. There are similar provisions in paragraph 12 dealing with the landlord's letting agent.

24. On the evidence before it the tribunal finds that neither exception applies here. It was not reasonable for the landlord/letting agent to delay issuing the tenancy agreement and when it was issued, just before the deadline, for it to be in a form that could not be signed by the tenant. The tribunal finds on the evidence provided by the tenant that she took reasonable endeavours to enter into the tenancy agreement.
25. The tribunal therefore orders the repayment of the holding deposit of £323.
26. The tribunal has limited powers to order the payment of costs, as set out in Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. On the evidence before it, it does not find that the respondent acted unreasonably in defending the proceedings and therefore makes no order for costs.
27. The tribunal has no power to order the payment of interest, damages or compensation.

Name: Judge J Pittaway

Date: 7 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 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).

Appendix

Relevant provisions from the Tenant Fees Act 2019

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.

SCHEDULE 2

Treatment of holding deposit

Application

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.

Interpretation

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.

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.

Exceptions

6 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—

(a) towards the first payment of rent under the tenancy, or

(b) towards the payment of the tenancy deposit in respect of the tenancy.

7 If all or part of the amount of the deposit is applied in accordance with paragraph 6(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.

8 Paragraph 3(b) or (c) does not apply if—

(a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,

(b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and

(c)if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.

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 Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.

11 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the landlord if—

(a)the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and

(b)if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but

(c)the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.

12 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent if—

(a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and

(b)the landlord takes all reasonable steps to enter into a tenancy agreement before that date, but

(c)the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.

13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—

(a)the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under

that section on the tenant or a person who is a relevant person in relation to the tenant, or

(b)the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.