



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

Case reference : **LON/00AB/HTC/2024/0007**

Property : ~~279 Sheppey Road RM9 4JU~~
**16 Holden Close, Dagenham, Essex RM8
2QS**

Applicant : **Mrs Nadya Gogosheva**

Representative : **I/P**

Respondent : **Birchills Estate Agents
Dayana Valcheva**

Representative : **N/K**

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 not required to repay the holding deposit of £403 to the applicant, due to the failure to disclose adverse information *para. 9 of Schedule 2 of The Tenancy Fees Act 2019* applies.
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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 16 Holden Close, Dagenham, Essex RM8 2QS pursuant to section 15 of the Tenant Fees Act 2019.

Background

2. The applicant asserts that she paid and the respondent received on or around 23 December 2023, payment of £403.00 from or on behalf of the applicant in respect of a holding deposit as a prospective tenant with her partner Mr Mario Gogoshev, of premises situate at 16 Holden Close, Dagenham, Essex RM8 2QS. Despite requests, the respondent has not repaid the outstanding holding deposit when the tenancy did not proceed.

The hearing

3. 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

4. The applicant relied upon her application form and the copies of her bank statement showing proof of payment of £403 to the respondent. In the application the applicant stated:

WE HAD A VIEWING IN A PROPERTY WE WANTED TO RENT. THE AGENT ASKED US TO PAY A HOLDING DEPOSIT OF £403 TO SECURE THE PROPERTY AND 2 WEEKS AFTER CALL ME TO EXPLAIN THAT THE LANDLORD DOESN'T ACCEPT US BECAUSE OF THE BAD CREDIT CHECK. INSTEAD TO RETURN THE HOLDING DEPOSIT THE AGENTS EMAILED ME TO SIGN ANOTHER DOCUMENT FOR THE DEPOSIT OF £403 TRANSFERRED TO ANOTHER PROPERTY WHICH WE NEVER SEEN . THEY TOLD US IF WE DON'T WANT THE SECOND PROPERTY TO PAY AND MOVE

(WITHOUTH VIEW) OUR DEPOSIT IS NOT REFUNDABLE.
AFTER THAT THEY BLOCK US NOT TO CALL OR EMAIL
THEM

The respondents' case

5. The applicant made a payment of £403.00 as a holding/reservation deposit for 16, Holden Close RM8 2QS, after which referencing process commenced and final reports from a third party referencing company (attached on showed adverse credit history on both the applicant's and their partner's report. In advance of the applicant's holding deposit payment was made to Birchills, the applicant received a holding deposit message. This message clearly states that if any details, provided by the applicant, are misleading or untrue/inaccurate, the holding deposit is non-refundable.
6. The applicant confirmed the details she had provided to the respondent were correct by making the holding deposit payment and by failing to declare any adverse credit history. Subsequently, the applicant and her partner failed the credit check and are therefore not entitled to a refund of their reservation deposit of £403.00

The tribunal's reasons

1. The tribunal finds the following:
 - (i) The applicant paid a deposit of £403 in respect of a holding deposit for a tenancy of 16 Holden Close, Dagenham, RM8 2QS.
 - (ii) The deposit was paid on or around 29/12/2023 to the first respondent Birchills Estate Agents.
 - (iii) In a document entitled HOLDINF (RESERVATION) DEPOSIT RECEIPT. The respondents asserted the deposit of £403 was non-refundable if the tenant fails referencing or credit checks.
 - (iv) The applicant and her partner failed the credit checks on or about 27 and 28 December 2023 and a tenancy agreement for the subject property at a rent of £1,750 pcm was not entered into by the parties.
 - (v) The applicant failed to disclose any adverse credit history on behalf of herself and her partner to the respondent.
 - (vi) The credit checks carried out by an independent third party revealed the applicant and her partner had an adverse credit history.

7. 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.

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.

8. The tribunal finds the applicant failed to disclose her adverse credit history and that of her partner to the respondents. The tribunal also finds the landlord was entitled to take into account the true financial position of the applicant in deciding whether or not to enter into a tenancy agreement.
9. In conclusion, the tribunal finds the respondent is not required to repay the £403 holding deposit to the applicant.
10. Therefore, the application is refused.

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).