



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

**Case Reference** : CHI/00ML/HTC/2024/0001

**Property** : 113 Upper North Street, Brighton  
BN1 3FJ

**Applicant** : Ms. Ida Moxham

**Respondent** : Mr. Fraser Hopewell

**Type of Application** : Application under Section 15 of  
the Tenant Fees Act 2019 for  
recovery of all or part of a  
prohibited payment from the  
landlord

**Tribunal Members** : Judge T. Hingston  
M.J.F. Donaldson FRICS  
T. Wong

**Date of Hearing** : 18 July 2024

**Date of Decision** : 26 July 2024

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**DECISION**

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**The Tribunal determines that the one-off payment of £400, which was demanded by the landlord Mr. Hopewell and paid by the tenant (the Applicant Ms. Moxham) in February 2023, was in fact an unregistered deposit rather than an increased rent. As a result it was a ‘prohibited payment’ under the Tenant Fees Act 2019 (See Appendix). However, since the money was repaid to Ms. Moxham on the 4<sup>th</sup> of May 2024 there was no necessity for any order to be made.**

## **BACKGROUND**

1. Mr. Fraser Hopewell is the landlord of the property at 113 Upper North Street, Brighton BN1 3FJ.
2. Ms. Moxham was the tenant of the said property at the material time, together with Joseph Millen and Aby Jacom.
3. On the 21<sup>st</sup> of December 2023 Ms. Moxham made an Application for recovery of what she said was a one-off prohibited payment of £400 which she had made to Mr. Hopewell on the 22<sup>nd</sup> of February 2023. There was also mention on the application form of an apparent attempt to charge for providing a reference for a future landlord.
4. The Tribunal was provided with a copy of the Application, together with written submissions from the Respondent Mr. Hopewell, a copy of the draft Addendum to the Tenancy Agreement, and a chain of emails between the parties during the relevant period.
5. The Tribunal was informed that the Assured Shorthold Tenancy Agreement in respect of the property stated that the tenants should not keep any domestic pets without prior written permission from the landlord. It also provided that such permission should not be unreasonably withheld.
6. In January 2023 the Applicant, Ms. Moxham, wrote to Mr. Hopewell seeking permission to get a cat. Initially Mr. Hopewell refused permission, explaining that he had had bad experiences in the past with pets which had damaged his property and owners who had been reluctant to pay for such damage. He further argued that there could be costs for amending the tenancy agreement to allow for a pet, and all in all he would end up out of pocket.
7. Ms. Moxham and Mr Millen engaged in further correspondence with the Respondent landlord, pointing out that the tenancy agreement obliged them to pay for cleaning at the end of the tenancy and that (under Clause 8.10.2) the tenants were liable to pay any fee for amendment of the agreement, so he would not be out of pocket.
8. Ms. Moxham, in an email of 30<sup>th</sup> January 2023, stated that if there were additional costs for damage and cleaning which were not covered by their deposit, they would pay the extra costs directly to Mr. Hopewell. She invited him to take the emails as written evidence of their undertaking to do so.

9. Mr Hopewell stated that he had been renting properties for 30 years, and that unless the tenants paid ‘upfront’ to cover ‘substantial potential costs’ permission was refused. He said that in the past tenants had paid £30 to £60 per month extra for pets, or (in some cases) they had transferred money to him to cover any issues, or they had paid a higher rent for the first month of the tenancy.
10. In reply, in her further email of 30<sup>th</sup> January 2023 Ms, Moxham asked:  
*‘So, if we transferred the money...would it work like a deposit?’*  
She asked if Mr, Hopewell would keep the necessary amount for any cat-related damage and return the remainder, and she asked how much this ‘deposit’ would be.
11. Mr. Hopewell replied: -  
*‘I think it would need to be at least £400, plus you would have to pay for a new AST. It would work like a deposit but I would not be able to register it as I’m not allowed to.’*
12. Ms. Moxham emailed on 31<sup>st</sup> January 2023 saying:  
*‘We would be happy to pay a £400 unregistered deposit on the basis that you would treat it like a protected deposit...’*
13. She asked how much it would cost to amend the tenancy agreement.
14. Mr. Hopewell advised her to speak to the agent, Mr. Jordan Tupper of Mishon McKay Lettings Ltd. In due course an Addendum to the Tenancy Agreement was drawn up by the agents, (with the wording proposed by Mr. Hopewell) on 8<sup>th</sup> February 2023. This Addendum provided for permission to keep one adult cat in the property, and it was signed by all 3 tenants but not by the landlord.
15. Ms. Moxham paid the £50 fee for the amendment on 4<sup>th</sup> February 2023.
16. Thereafter, Ms. Moxham emailed Mr. Hopewell on the 9<sup>th</sup> and on the 17<sup>th</sup> of February 2023, attaching the addendum and asking him to sign it so that she could then send the ‘deposit’.
17. Mr. Hopewell replied on the 19<sup>th</sup> of February 2023, giving his bank details and stating that he *‘...was waiting for the money to be transferred.’*
18. On the 22<sup>nd</sup> of February 2023 Ms. Moxham confirmed by email to Mr. Hopewell that she had transferred the ‘deposit’. A copy of her bank statement showing the transaction (£400 paid to Mr. Hopewell, 22.03.23) was provided to the Tribunal.
19. On the 24<sup>th</sup> of February 2023 Mr. Hopewell emailed, saying that he did not have access to his laptop at that time (to sign the document) but: *‘Please go ahead...’*. (Note: Mr. Hopewell did not, in fact, ever sign the Addendum.)

20. Ms. Moxham made her Application on 21<sup>st</sup> December 2023 as above. Then on the 8<sup>th</sup> of May 2024 she emailed the Tribunal saying that her landlord ‘...has since transferred £400 ...’ to her, calling it ‘rent’ but with no other explanation or communication. She stated that she was not sure whether to proceed with the Tribunal hearing or not.
21. Following Directions from the Tribunal, in the absence of any formal withdrawal by the Applicant, the matter came before the Tribunal on the 18<sup>th</sup> of July 2024.

## **HEARING**

22. The hearing was held at Havant Justice Centre and was attended by both parties in person.

### Applicants’ case

23. Ms. Moxham submitted that the £400 one-off payment was a deposit, rather than ‘rent’, and that it was a prohibited payment because it did not fall into any of the categories of Permitted Payments in Schedule 1 of the Tenant Fees Act 2019.
24. Ms. Moxham drew the Tribunal’s attention to the chain of email correspondence in which she had repeatedly referred to the lump sum as a ‘deposit’ and Mr. Hopewell had not contradicted her.
25. Ms Moxham also gave evidence that there had been issues between the parties at the end of the tenancy (in November 2023) because there was a dispute about the state of the carpets before and after their occupation and Mr. Hopewell refused to return the £400 ‘deposit’. However, the money was eventually refunded to her account on the 8<sup>th</sup> of May 2024 without any explanation or communication from him.
26. The Addendum to the Tenancy Agreement, with its clauses allowing them to keep a cat, was never ratified by Mr. Hopewell’s signature even though both the fee for amendment and the ‘deposit’ money had been paid.
27. Note|: The further question of a ‘prohibited payment’ in respect of Mr. Hopewell’s mention of a possible charge for providing a reference was not pursued by Ms. Moxham.

### Respondent’s case.

28. Mr. Hopewell, in response, argued that the £400 was ‘rent’ which was an additional amount legitimately demanded upfront in respect of an amendment to the agreement which allowed the tenants to keep a cat.
29. He stated that he had instructed the letting agents to make the amendment, firstly giving permission for keeping a cat *and* secondly providing for an increase in rent. He told the Tribunal that he had not signed the Addendum

because it did not set out the provisions in a new agreement as he had intended.

30. Mr. Hopewell submitted that the £400 represented the total figure calculated by taking £40 per month for the remaining 10 months of the 12-month tenancy (from February 2023 onwards).
31. He told the Tribunal that he was trying to help the tenants by saying that, if there was no damage at the end of the period, he would refund the money.
32. As for the mention of a possible fee for providing a reference, he told the Tribunal that he had never demanded such a fee from Ms. Moxham, he had merely pointed out in an email to her that the agents might make a charge for such a service.

### **FINDINGS AND DETERMINATION.**

33. The Tribunal considered the email correspondence provided by the parties and concluded that the lump sum of £400 was in fact an unregistered deposit, rather than rent.
34. If there had been an agreement between the parties to the effect that the rent would be increased in order to allow for them to keep a cat, that could have been quite properly achieved by an amended tenancy agreement which was signed by all concerned. The figure for rent would have been amended to include the extra £40 per month, and the rent would have been payable over the course of the tenancy in the usual way - not in one lump sum at the outset. None of the rent would have been refundable at the end of the tenancy.
35. However, in this case the tenant clearly enquired as to whether the £400 would work like a deposit and Mr. Hopewell confirmed that it would. At no stage in the correspondence produced to the Tribunal is there any reference to an actual amended figure of x amount of rent per month, nor is there any correspondence in which the parties discuss what the new rental figure might be.
36. Mr. Hopewell made it clear that he knew he would not be 'allowed' to register the extra £400, which appears to be a concession that, with his 30 years' experience of lettings, he knew that such an arrangement was illegal.
37. The Tribunal also found that, if Mr. Hopewell had genuinely intended to set up an amended tenancy agreement, with a different monthly rent, he would have referred to it in his email to the agents rather than merely setting out the exact wording which was required to give permission for a cat.
38. When Ms. Moxham repeatedly asked Mr. Hopewell to sign the new Addendum to the agreement, he asked for the money first (rather than saying that the clause setting out a new rental figure had been omitted) and then gave other explanations as to why he had not signed the document. The payment

should never have been demanded and/or processed until the agreement was clear and correctly reflected the intention of the parties.

39. Finally, the Tribunal found that Mr. Hopewell only returned the money in May 2024 after he became aware of Ms. Moxham's application to the Tribunal. If the money was really rent, and if it was paid under a legal and valid agreement, then there would have been no question of it being returned.

## **CONCLUSION**

The Tribunal finds that the £400 paid by Ms. Moxham to her landlord the Respondent was in fact a 'Prohibited payment' within the meaning of the said Act. Even if it had been called 'rent' by both parties (which it was not), it was clearly an unregistered deposit and treated as such throughout.

However, as the money has now been repaid the Tribunal is not required to make any order for recovery.

No finding is made on the question of 'charges for a reference' because no demand was ever actually made and the matter was not pursued by the Applicant.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.