



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

Case reference : LON/00AH/HTC/2024/0019

Property : Flat 5, 25A Temple Road, Croydon, CR0 1HU

Applicant : Lauren George

Representative : n/a

Respondent : Bluestone Properties Ltd

Representative : Philip Stone

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

Tribunal member(s) : Judge D Brandler

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 3 October 2024

DECISION

ORDER

- (1) On or before 17 October 2024 the Respondent shall repay the Applicant the amount of £495.15 paid in respect of a prohibited payment relating to Flat 5, 25A Temple Road, Croydon, CR0 1HU**
- (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 that Court.**

The application

1. This is an application for an order for the recovery of a prohibited payment/holding deposit paid in respect of a prospective tenancy at Flat 5, 25A Temple Road, Croydon, CR0 1HU (“the property”) pursuant to section 15 of the Tenant Fees Act 2019 (“the Act”)
2. The application form and supporting documents appear to confirm that on or about 16/05/2024 the respondent received payment of £495.15 from the applicant, which appears to be a sum equivalent to no more than one week’s rent. When the applicant decided not to proceed with the tenancy agreement, she asked for the holding deposit to be returned which the respondent declined to do and has not repaid that amount.
3. The issues to be determined are whether the holding deposit was a prohibited payment, whether it must be repaid and whether the tribunal should make an order under s.15 of the Act for the respondent to repay all or any amount to the applicant
4. The Tribunal gave directions on 26/07/2024. These directed that the matter be determined on paper, with the option for either party to request an oral hearing. Neither party has requested an oral hearing and the tribunal therefore determine the matter on the papers.

Relevant law

5. This is set out in the Appendix annexed hereto

Decision

6. The determination of the application was based solely on documentary submissions filed by the parties which were fully considered.
7. Under the terms of the Act, landlords and letting agents must not require tenants (including prospective tenants and guarantors) to make any prohibited payments. In short, a payment is a "prohibited payment" unless it is a permitted payment as listed in Schedule 1 of the Act below.
8. A landlord may seek a holding deposit from a prospective tenant to reserve a property, however, such holding deposit must be repaid within 7 days of the landlord and tenant either: (a) Entering into a tenancy agreement, (b) The landlord decides not to enter into a tenancy agreement; or (c) The landlord and tenant fail to enter into a tenancy agreement by the deadline.
9. The Act provides that the deadline for the landlord and prospective tenant to enter into a tenancy agreement is 15 days and where this does not happen the landlord will have to repay the holding deposit to the

prospective tenant within 7 days. The Act does, however, permit a landlord and prospective tenant to agree in writing a different deadline rather than 15 days.

10. A landlord can only retain a tenant's holding deposit if they provide false or misleading information which reasonably affects the decision to let the property to them, they fail a right to rent check, withdraw from the proposed agreement or fail to take all reasonable steps to enter an agreement when the landlord and/or agent has done so.

11. On the basis of the evidence provided by the parties, the Tribunal made the following findings of fact:

(a) the Applicant paid a holding deposit to the Respondent on or about 16/05/2024 for the rental of a three bedroom apartment in the sum of £495.15

(b) there is no suggestion that sum exceeds the equivalent of one week's rent

(c) On 20/05/2024 the respondent received the reference report which identified that the applicant's credit rating was very poor stating "*is indicative of a very high risk tenant*" with a warning of an active CCJ of £5,100. This CCJ had not been disclosed by the applicant prior to the reference report and she provided false or misleading information

(d) having obtained the adverse reference report, the agreement was delayed whilst the applicant told the respondent that she would have this CCJ removed. This was not effective,

(e) further to the negative report, the respondent offered the applicant alternatives to enable her to enter into the tenancy agreement, those being either to obtain a guarantor or to pay either 3 or 6 month's rent in advance. It was noted that in the applicant's email to the respondent on 18/05/2024 she wrote "*Now if this is a delay and I need a guarantor let me know and I will send over his details*". However, once the CCJ had been exposed with the poor credit reference, no guarantor appeared to be forthcoming from the applicant and this option was not taken up by her. Nor were the options of rent in advance accepted. The matter dragged on without resolution and the applicant withdrew from the proposed agreement on or around 11/06/2024.

(f) although there were ongoing written and oral negotiations by both parties, the period was an undefined extension in breach of paragraph 2(2) of Schedule 2 to the Act. Those negotiations came to an end when the applicant withdrew from the proposed agreement on or around 11/06/2024

(g) in response to applicant's withdrawal from the proposed agreement and her request for the return of the holding deposit, the respondent failed to advise her in writing within 7 days of the reasons why the holding

deposit would not be returned in breach of paragraph 5(1) and (2) of Schedule 2 of the Act

12. For the above reasons, the amount of £495.15 is a prohibited payment and the respondent is ordered to repay that amount within 14 days of this order.

Name: Judge D Brandler Date: 3 October 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. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.**

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Tenant Fees Act 2019 c. 4

15 Recovery by relevant person of amount paid

(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.

(4) Subsection (5) applies where—

(a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and

(b) the relevant person has made a payment or payments under the contract.

(5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.

(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

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.

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.

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.

