



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

Tribunal Case reference	:	CHI/43UJ/HTC/2023/0010
Property	:	203 Frimley Road, Camberley, Surrey, GU15 2QD
Applicant	:	Phyu Hnin Khine
Respondent	:	Ginny Monroe
Type of application	:	Recovery of a holding deposit S15(3) and (5) Tenant Fees Act 2019
Tribunal member(s)	:	Regional Surveyor Clist MRICS
Date of Decision	:	8 October 2024

DECISION

SUMMARY OF DECISION

1. **The Applicant is entitled to the return of £730 of prohibited payments from the Respondent. The Respondent shall pay the sum of £730 to the Applicant within 28 days of the date of this decision.**

BACKGROUND

2. The Applicant seeks a determination that the balance of a payment in the sum of £730 paid to the Respondent is either a holding deposit or a prohibited payment for the purposes of the Tenant Fees Act 2019 and should be repaid to her by the Respondent.
3. Directions were issued on 15 May 2024 requesting further information from the Applicant. Further directions were issued on 28 May 2024 listing the matter for a hearing by video on 9 July 2024. In the event only the Applicant attended the hearing.
4. At the hearing, Regional Judge Whitney raised his concerns as to whether the Tribunal had jurisdiction to consider the claim under the Tenant Fees Act 2019. Each party was directed to make written submissions on the point by 30 July 2024, following which the Tribunal would determine the application on the papers supplied. The parties were advised that if either party failed to submit any documents the Tribunal would continue to make its determination on the documents already filed and any received in accordance with the directions. Both parties were urged to seek legal advice.
5. In accordance with the directions the Applicant submitted a further statement. No documentation was received from the Respondent.
6. On the 9 August, Directions were issued to the parties stating that the matter was suitable for paper determination.

7. **THE LAW**

8. The Act is one of a number of pieces of legislation enacted to enhance tenant's rights. The Act places a prohibition on landlords and letting agents from charging most payments associated with a tenancy other than rent and authorised tenancy deposits (up to five or six weeks' rent, dependent on the level of rent annually).
9. Much of the structure of the Act is built on the concepts of "prohibited payments" and "permitted payments". Section 3 of the Act defines a payment as a prohibited one:

"unless it is a permitted payment by virtue of Schedule 1"

10. Therefore, payments associated with a tenancy are prohibited unless an exception specifically permitted. Schedule 1 contains a list of permitted

payments that is both long and detailed and must be considered in the context of the given case.

11. Section 15 provide that a relevant person can apply to the Tribunal for an order that the amount or part of the amount of a prohibited payment should be repaid to them. There are two conditions for making an application, namely that:
 - a) “A landlord or letting agent is in breach of (section 1 or 2 or) Schedule 2 and as a result has received a prohibited payment which has not been repaid or repaid in full, or”
 - b) [in relation to contracts with third parties]
12. Such an order must specify the time by which the repayment must be made, at least seven days but not more than fourteen days beginning with the day after that on which the order is made. The order is enforceable as if it were an order of the County Court.
13. By paragraph 3 of Schedule 1, payment of a holding deposit may be a permitted payment but there are stringent conditions. A holding deposit is defined as money paid to a landlord or letting agent before the grant of a tenancy with the intention that it is dealt with in accordance with Schedule 2 of the Act. Such a holding deposit is a prohibited payment to the extent that the amount exceeds one week’s rent.
14. Schedule 2 provides for when a holding deposit must be repaid and when it can be retained. In summary, a holding deposit must be repaid pursuant to paragraph 3) where:
 - a) “The landlord and tenant enter into a tenancy agreement, unless the holding deposit is applied towards the first payment of rent due:
 - b) The landlord decides before the deadline for agreement not to enter into a tenancy agreement, in which event it must be repaid on that date. That deadline is the fifteenth day following the date the holding deposit is paid or such other period as it agreed in writing by the tenant.
 - c) The landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, in which event repayment must be on the deadline for agreement date.”
15. In terms of the timing of the repayment, paragraph 4 says the following:

“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.”

16. In addition, the holding deposit does not need to be repaid where the provisions of paragraph 6 apply. Those read as follows:

“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.

17. Statutory guidance has been issued by the Minister of Housing, Communities and Local Government but need not be recited here.

THE PARTIES' CASES

18. The Applicant's paper case states that upon agreement to rent a room in the Respondent's house, she agreed to pay a holding deposit of £250 to secure the room. Evidence was provided to confirm that the payment was made to the respondent on the 19 November 2022.
19. In response to Directions requiring further information, the Applicant emailed the Tribunal on the 22 May 2024 to confirm that the initial £250 holding deposit later formed part of the £750 returnable tenancy deposit, to which evidence was provided displaying messages from the Respondent outlining such. The Applicant also sent proof of a payment made on the 2nd December, followed by an additional payment on the commencement of her occupation of the room at the subject property for a total amount of £1,150, which the applicant states comprised £650 of rental payment and £500 payment towards the returnable deposit.
20. The applicant provided the Tribunal with a House Share Agreement dated 24 January 2023 and a 'Share House Agreement Contract' dated 28 March 2023.
21. The applicant ceased occupation of the subject property on the 10 August 2023 to which she subsequently requested the return of her tenancy deposit.
22. The applicant supplied the Tribunal with numerous screenshots of messages sent to the respondent requesting the return of her £750 deposit between the period of August-September 2023. The Respondent does not appear to reply.
23. Whilst the Respondent sent correspondence to the Tribunal on a number of occasions, the detail relates to her personal difficulties in engaging with the proceedings. The Respondent has not made any direct submissions to the Tribunal specifically relating to the matter of the nature of the charges made to the Applicant.

24. Notwithstanding, the Applicant has supplied to the Tribunal a 9 page letter dated 11 September 2023 from the Respondent to the Applicant, for the purpose of any court proceedings. The letter details a number of matters, many of which related to the Respondent's personal situation. The Respondent's submissions directly addressing the charges made to the Applicant by way of retention of the tenancy deposit are as follows:
- i) Photography – The Respondent directs the reader to photographic evidence of the condition of the Applicant's room whilst in occupation. The Respondent later states at page 9 that these were not included due to ill health. The Respondent states that she is charging the Applicant for ‘...the cost of Ginny Monroe's time used, for Ginny Monroe's time in having to organise photography, which is a time consuming process to present as evidence within a document. Ginny Monroe's time for this matter is billed at £15.00 an hour. The Respondent states that this is a fair and reasonable charge of her time, and this cost is included within the £400.
 - ii) Tenant's obligations - It is said by the Respondent that she should not have needed to have spent time on this matter on the basis of the ‘written tenancy agreement’ between herself and the Applicant. Of which, states ‘...that your bedroom should be kept clean and tidy, along with an array of other matters written about Ginny Monroe's property 203 Frimley Road, Camberley, GU15 2QD’ The Respondent states that the subject letter has taken about 10 hours ‘thinking time’ and about 12 hours writing time. The Respondent states that she has charged the Applicant a total of £330 which equates to £15 per hour. The Respondent states that the charge is fair and reasonable for her time.
 - iii) Establishing and operating a business on the Respondent's property, without consent - The Respondent specifies that that this induced additional noise from the Applicant in terms of ‘talking noise or shouting vocal noise’. The Respondent states that she had to address the noise with the Applicant on occasions and cited the date of 8th August 2023 by way of example. The Respondent states that she is charging the Applicant £15 per hour for her ‘unrecorded time’ yet has been included within the £400 total. The Respondent states that the charge is fair and reasonable for her time.
 - iv) The Respondent's time for taking deliveries in connection with the Applicant's alleged business operation - The Respondent states that she is charging the Applicant £15 per hour for her ‘unrecorded time’ yet has been included within the £400 total. The Respondent states that the charge is fair and reasonable for her time.
 - v) Managing a business and working on/at your business from the subject property without the Respondent's consent - It is said by

the Respondent that she incurred extra cost of electricity, gas, water and her own time in expanding the broadband capability for the Applicant's business. The Respondent makes a charge of £200 for the cost of utilities in addition to £15 per hour of her own unrecorded time which is recorded in the total figure of £400. The Respondent states that the charges are fair and reasonable.

- vi) The Respondent's time to communicate with the Applicant regarding the move-out date - The Respondent states that the Applicant varied the date and time. The Respondent states that she has charged the Applicant for her time used 'in writing, in editing and in thinking about these unnecessary messages'. The Respondent states that she is charging the Applicant £15 per hour for her 'unrecorded time' yet has been included within the £400 total. The Respondent states that the charge is fair and reasonable for her time.
 - vii) The Respondent claims that the condition of the Applicant's lodging room affected marketing for a new lodger to take up the room once the Applicant had vacated. For this, the Respondent states is also included within the £400 charge.
 - viii) The Respondent is said to have sent a detailed message requesting the Applicant to tidy her lodging room to which the Respondent claims to have spent four hours of thinking time and a further 3 hours writing and editing time. The Respondent states that this has been charged at £15 per hour and is included within the £400 total.
25. The Respondent then effectively summarises the charges into the following brackets:
- 1) Cost charged for Phyu Hnin Khine working from home without consent: this cost is for the utility services at the property, when Phyu Hnin Khine worked from home at the property - £200
 - 2) Cost charged for Phyu Hnin Khine working on Phyu Hnin Khine's business established without consent: this cost is for the utility services use[d] at the property, when Phyu Hnin Khine worked in Phyu Hnin Khine's business at the property - £200
 - 3) Cost of Ginny Monroe's time used to create this document/email/letter - £330.
26. The Respondent reiterates that the cost of taking business deliveries, her time used to deal with messages and an array of matters to the Applicant is included within the £400 total.
27. The Respondent states that the balance of the returnable deposit is £20 to which she agreed to return to the Applicant as at the date of the letter.

- 28) The Respondent did not provide any evidence as to the allegations or to substantiate how said the costs were incurred.
- 29) The Applicant provided a further statement on the 30 July 2024 which summarised her position. It is said by the Applicant that charges for 'utility costs for working from home' (£200) and 'utility costs for Business Activity (£200) are both prohibited payments under Schedule 1, Paragraph 8 of the Tenant Fees Act 2019 whereby the Respondent utility costs should only be charged against actual usage which has not been evidenced. The Applicant states that Utility Costs for Business Activity is also a prohibited payment as is based upon an incorrect assumption that the tenant was conducting business activities at the subject property.
- 30) The Applicant deems time spent handling business deliveries (to which the Respondent includes in the £400), time spent responding to messages (also included within the £400), time spent on other matters related to the tenancy (also included in the £400) and time spent creating documentation/email/ letter (£330) are not permitted payments under the Tenant Fees Act.
- 31) The Applicant also asserts that there was 'improper retention of her holding deposit' by the Respondent to which she states exceeds the statutory cap of 1 week's rent which she equates should have been limited to £162.50. It is said that the holding deposit exceeded the limit by £87.50 and as such is a prohibited payment under the Act.
- 32) The Applicant further states that she experienced unfair treatment whilst occupying the Respondent's property but does not relate this to the Act in any way.
- 33) The dates of occupation and dates of payments referred to by the Applicant have not been challenged by the Respondent.

CONSIDERATION

- 34) The Tribunal firstly considers the matter of the holding deposit paid by the Applicant to the Respondent on the 19 November 2022 to secure the room she later rented and occupied. The Tribunal calculates that the holding deposit ought to have been no more than £150, equivalent to one week's rent, as per Schedule 1, Paragraph 2 (4) (c). Notwithstanding, the Tribunal finds that the Applicant gave consent for the balance of the holding deposit of £250 to be transferred into a returnable tenancy deposit, following the Applicant's acknowledgement of such in an email dated 22 May 2024. The email evidenced the Respondent outlining the payments required and bank payments from the Applicant to the Respondent.
- 35) Consensual transfer of holding deposit funds falls under a listed exemption, under Paragraph 6 of Schedule 2 of the Act, to the requirement to repay a holding deposit under Paragraph 3a of the same. The Tribunal therefore finds that the Respondent had no

requirement to repay the holding deposit, as it later formed part of the tenancy deposit and/or rent.

- 36) The Tribunal then turns to the matter of the charges made by the Respondent, which led to the withholding of £730 of the Applicant's returnable deposit.
- 37) Firstly, the Tribunal considers the charge of £200 in relation to the Applicant working from home. The Tribunal notes that it is disputed by the Applicant that she worked from home. The Respondent has not provided any evidence to support the assertion. Nevertheless, the Tribunal considers Schedule 1 of the Tenant Fees Act 2019 which outlines the types of payments that are permitted under the Act. The Respondent refers to additional costs for utilities and broadband (beyond those already included within the Applicant's rent) but has not provided any evidence of the costs actually incurred for the same. As such, the charge is a Prohibited Payment under the Act, to which the Respondent is not entitled to recover this cost from the Applicant. The Tribunal therefore needs not to make a finding on whether the Applicant worked from home without the consent of the Respondent.
- 38) With respect to the second charge of £200 for the Applicant operating a business at the subject property, the Applicant also disputes that she did such. The Respondent does not provide any evidence to support her assertion. Like the first charge, the Respondent has not provided any evidence of the additional utility costs or broadband charges actually incurred. The charge is therefore a Prohibited Payment under the Act and as such the Respondent is not entitled to make the charge to the Applicant. The Tribunal therefore, makes no finding on whether the Applicant operated a business on the Respondent's premises as the issue falls away.
- 39) The Respondent makes reference to other items included within both charges, to which includes the Respondent's time in taking deliveries in connection with the Applicant's purported business, time spent writing messages and dealing with an array of matters with regards to the Applicant. The Respondent applies a value of £15 per hour to her time, although has not quantified the time spent on such. In any case, the Respondent includes her time within the bracket of both charges. These items are not included within the list of Permitted Payments in Schedule 1 of the Act and as such, the Respondent is not entitled to charge this cost to the Applicant.
- 40) The third charge for the Respondent's time used to create the letter outlining the charges of £330 does not fall within the list of Permitted Payments under the Act. As such, the Respondent is not entitled to charge this to the Applicant.

DECISION

- 41) The Tribunal determines that the Respondent has failed to evidence costs incurred from her assertion that the Applicant was working from home and operating a business.
- 42) The Respondent's charges in relation to her time spent dealing with matters relating to the Applicant and this application are not included as a Permitted Payment under Schedule 1 of the Act.
- 43) The Tribunal determines that the charges made to the Applicant by the Respondent, which led to the retention of £730 of the Applicant's returnable deposit are prohibited payments.
- 44) The Applicant is entitled to the return of the balance of £730 of the returnable tenancy deposit, to which £750 was originally paid.
- 45) The Application accordingly succeeds.

Rights of Appeal

1. A person wishing to appeal decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.