



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

Case Reference : **BIR/00CQ/HTC/2024/0003**

Property : **308, Cheveral Avenue, Coventry, CV6 3EQ**

Applicant : **Rahul Rajakrishnam**

Respondent : **Kathiripillai Srirangan**

Type of Application : **Recovery of all or part of a prohibited
Payment: Tenant Fees Act 2019**

Judge : **Tribunal Judge P. J. Ellis**

Date of Hearing : **4 November 2024**

Date of Decision : **7 November 2024**

DECISION

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- 1. The Respondent has procured payments from the Applicant unpermitted by the Tenant Fees Act 2019 namely three payments of £20.00 (£60.00), three payments of £42.00 (£126.00) and one payment of £80.00 in total £266.00.***
- 2. The Tribunal orders the Respondent to pay the Applicant £266.00.***

Introduction and Background

1. This is an application for recovery of all or part of a prohibited payment made by the Applicant Rahul Rajakrisnam to the Respondent Kathiripillai Srirangan. The application is made pursuant to the Tenant Fees Act 2019 (the Act). It relates to alleged payments made in or about October of each five years between 2017 and 2021. The Tribunal issued directions for service of statements of case on 2 May 2024. A further direction restricted the application to years 2019, 2020 and 2021 being years after the Act came into force. As neither party asked for an oral hearing the matter was listed for determination on the papers by judge alone.
2. The Payments the subject of this application are three payments of £20.00 made on the commencement of each tenancy; three payments of £42.00 to apply for a rent guarantee scheme and a payment of £80.00 for electricity properly payable by the Respondent for power tools used by his tradesman in the course of construction work carried out at the property in October 2021 during the tenancy. The total sum claimed is £266.00.

The Tenancy Agreements

3. Although the application was issued by Rahul Rajakrishnan, the tenancy agreements were made each year with effect from 23 October in the names of the Applicant, Rishi Rajakrishnan and Kalavathy Ratnarajah Rajakrishnan. Each filed short corroborative statements.
4. The agreements were all in substantially the same terms. The rent was £650.00pcm in 2019 and 2020 rising to £700.00 in 2021. In October of each of the relevant years the parties entered a new agreement for twelve months.
5. The agreement is ambiguous regarding a deposit. In the preamble no deposit is provided for but the payment clause provides for a first payment of double rent. Clause 3 of the Schedule the agreement provides the Landlord will retain a deposit of one month's rent which will be returned at the end of the tenancy.

On 21 December 2022 Mr District Judge Gilmore sitting in the County Court at Coventry found that the Respondent had taken a deposit in the sum of £650.00 on 17 October 2017 (the start of the tenancy) and had failed to protect it under an authorised scheme.

6. Other relevant clauses in the schedule provided that the tenants were responsible for arranging utilities including electricity in their own name. At clause 11 the tenants were to pay a fee of £35 +VAT (£42) charged per applicant to apply for a rent guarantee scheme. The agreement also provided for a payment of £20.00 for any letter notifying late payment and £35.00 for failure to pay with interest of 2% on arrears. There was no provision for payment of £20.00 on making the agreements.

The Parties Submissions

7. The Applicant's case is that at the commencement of each new tenancy a payment of £62.00 in cash was made to the Respondent by Mrs Rajakrishnan. The payments were seen by the son of Mr & Mrs Rajakrishnan, the second named tenant Rishi Rajakrishnan. There was no explanation of the "rent guarantee scheme" nor any documentation to justify it. The overpayment of electricity occurred in October 2021 when a contractor engaged to do some work at the property used the Applicant's electricity supply to power a concrete mixer, a kettle and microwave. Additional heating was required during the period of the works. The sum of £80.00 is an estimate of the additional expense accrued. The Respondent had promised to compensate the Applicant for the usage but failed to do so.
8. The Respondent contends there was an error in the tenancy agreement which was prepared by an estate agent who used an incorrect template thereby including in error the amounts referred to. In any event he asserts no payments were ever made by the Applicant or his family. He maintains the Applicant has not produced evidence of such payments. He makes no answer to the allegation of overpayment of electricity although as there is a bare denial of any payments being made it can be taken the denial extends to the cost of electricity claim.

9. The Respondent did not name the estate agency responsible for the alleged error, but the Applicant's evidence included copies of company searches showing the Respondent is a director of an estate agency company Man Limited.

Statutory Framework

10. On the introduction of the Act in 2019 the government produced a guide for landlords which provides at the opening paragraph:

“You cannot require a tenant (or anyone acting on their behalf or guaranteeing their rent) to make certain payments in connection with a tenancy. You cannot require them to enter a contract with a third party or make a loan in connection with a tenancy.” It then lists the permitted payments and next provides

“If the fee you are charging is not on this list, it is a prohibited payment and you should not charge it. A prohibited payment is a payment outlawed under the ban.”

11. This is the operation of ss1 & 2 of the Act. S15 provides a specific remedy for reimbursement of made by a tenant of a banned payment. There is annexed to this decision extracts from the legislation. S1 is relevant to this case but as the Respondent has alleged an estate agent was responsible for an error in drafting the tenancy agreement, both sections are set out followed by s 15 which creates a right on the part of the tenant to seek reimbursement. Schedule I to the Act is not reproduced in full but permitted charges are recorded as described in the government guidelines to the Act.

Discussion and Decision

12. In this case the payments at commencement of the tenancy for a rent guarantee scheme and £20 for no apparent reason are not permitted payments and susceptible of a claim for reimbursement. The term of an agreement seeking an unpermitted payment is of no effect. S1 of the Act is explicit. “*A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy*”. The Respondent denies any payment was made. The Applicant served witness statements reciting payments were made in cash to the Respondent at the commencement of each new tenancy. On

balance the Applicant's evidence is preferable. The Applicant's allegations that these payments were made are accepted.

13. The Respondent's evidence was limited to a denial of receipt of any payments together with an attempt to blame an error on an unnamed estate agency. There is nothing to support the suggestion the property was managed by an agency. The landlord is named in the agreement as the Respondent. The tenancy agreement does not refer to an agency. The person responsible for reimbursement of the impermissible payments is the Respondent.
14. The additional sum for electricity consumed for the landlord's benefit is also an impermissible payment. The sum claimed is based on an estimate. The Respondent did not reply to the allegation other than in an unfocussed bare denial. It is probable that the Applicant's electricity account would be increased by running power tools from his domestic supply. In the absence of any meaningful response from the Respondent the claim or a payment of £80.00 is accepted.
15. The decision of this Tribunal is that the Respondent has procured payments from the Applicant unpermitted by the Tenant fees Act 2019 namely three payments of £20.00 (£60.00), three payments of £42.00 (£126.00) and one payment of £80.00 in total £266.00. The Tribunal orders the Respondent to pay the Applicant £266.00.

Appeal

16. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge Peter Ellis

Annexe

Extracts from the Tenant Fees Act 2019 relevant to this Decision

BIR/00CQ/HTC/2024/0003(P)

1. Section 1

Prohibitions applying to landlords

(1) A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England.

(2) A landlord must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England.

(3) A landlord must not require a relevant person to enter into a contract with a third party in connection with a tenancy of housing in England if that contract is—

(a) a contract for the provision of a service, or

(b) a contract of insurance.

(4) Subsection (3) does not apply if the contract is for—

(a) the provision of a utility to the tenant, or

(b) the provision of a communication service to the tenant.

(5) A landlord must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England.

(6) For the purposes of this section, a landlord requires a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the landlord—

(a) requires the person to do any of those things in consideration of the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy,

(b) requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things in the event of an act or default of a relevant person,

(c) requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things if the tenancy is varied, assigned, novated or terminated,

(d) enters into a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things other than in the circumstances mentioned in paragraph (b) or (c),

(e) requires the person to do any of those things—

(i) as a result of an act or default of a relevant person relating to such a tenancy or housing let under it, and

(ii) otherwise than pursuant to, or for the breach of, a provision of a tenancy agreement, or

(f) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person's occupation of housing in England.

(7) For the purposes of this section, a landlord does not require a relevant person to make a payment, enter into a contract or make a loan if the landlord gives the person the option of doing any of those things as an alternative to complying with another requirement imposed by the landlord or a letting agent.

(8) Subsection (7) does not apply if—

(a) the other requirement is prohibited by this section or section 2 (ignoring subsection (7) or section 2(6)), or

(b) it would be unreasonable to expect a relevant person to comply with the other requirement.

(9) In this Act “relevant person” means—

(a) a tenant, or

(b) subject to subsection (10), a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant.

2. Section 2

Prohibitions applying to letting agents

(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.

(2) A letting agent must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England.

(3) A letting agent must not require a relevant person to enter into a contract with the agent or a third party in connection with a tenancy of housing in England if the contract is—

(a) a contract for the provision of a service, or

(b) a contract of insurance.

(4) A letting agent must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England.

(5) For the purposes of this section, a letting agent requires a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the letting agent—

(a) requires the person to do any of those things in consideration of arranging the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy,

(b) requires the person to do any of those things pursuant to a provision of an agreement with the person relating to such a tenancy which requires or purports to require the person to do any of those things in the event of an act or default of a relevant person,

(c) requires the person to do any of those things pursuant to a provision of an agreement with the person relating to such a tenancy which requires or purports to require the person to do any of those things if the tenancy is varied, assigned, novated or terminated,

(d) requires the person to do any of those things—

(i) as a result of an act or default of a relevant person relating to such a tenancy or housing let under it, and

(ii) otherwise than pursuant to, or for the breach of, an agreement entered into before the act or default, or

(e) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person's occupation of housing in England.

(6) For the purposes of this section, a letting agent does not require a relevant person to make a payment, enter into a contract or make a loan if the letting agent gives the person the option of doing any of those things as an alternative to complying with another requirement imposed by the letting agent or the landlord.

(7) Subsection (6) does not apply if—

(a) the other requirement is prohibited by this section or section 1 (ignoring subsection (6) or section 1(7)), or

(b) it would be unreasonable to expect a relevant person to comply with the other requirement.

(8) This section does not apply to a requirement imposed by a letting agent on a relevant person if—

(a) the requirement is imposed by the letting agent in consideration of providing a service to a tenant,

(b) as part of that service the agent finds housing for the tenant to rent and the tenant rents that housing, and

(c) the agent does not act on behalf of the landlord of that housing, whether in relation to that housing or any other housing.

3. S15 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 1 Tenant Fees Act 2019

From 1 June 2019, the only payments that landlords or letting agents can charge to tenants in relation to new contracts are:

- rent
- a refundable tenancy deposit capped at no more than 5 weeks' rent where the total annual rent is less than £50,000, or 6 weeks' rent where the total annual rent is £50,000 or above
- a refundable holding deposit (to reserve a property) capped at no more than 1 week's rent

- *payments associated with early termination of the tenancy, when requested by the tenant*
 - *payments capped at £50 (or reasonably incurred costs, if higher) for the variation, assignment or novation of a tenancy*
 - *payments in respect of utilities, communication services, TV licence and Council Tax*
 - *a default fee for late payment of rent and replacement of a lost key/security device giving access to the housing, where required under a tenancy agreement*
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