



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

Case reference : **LON/00AC/HTD/2024/0001**

Property : **Suite 1, 31 Woodstock Road, London
NW11 8ES**

Applicant : **Home London Ltd**

Representative : **Solomon Taylor & Shaw LLP solicitors**

Respondent : **London Borough of Barnet**

Representative : ***Ref: TSCP/20/0000299*
*Ash Shah***

Type of application : **Appeal against a Financial Penalty**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **3 December 2024**

DECISION

The tribunal's decision

1. The tribunal quashes the Financial Penalty Notice dated 24 April 2024 pursuant to its powers under para. 6(5) of schedule 3 of the Tenant Fees Act 2019.
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The application

2. This is an application by the applicant Letting Agent against a decision by the respondent local authority, The London Borough of Barnet (LBB) to impose a financial penalty of £5,000 on the applicant landlord for an alleged breach of section 2 of the Tenant Fees Act 2019 ('the 2019 Act') as it is alleged the applicant repaid to the tenants only the sum of £350 of a holding deposit of £500.

Background

3. The applicant asserted it obtained a holding deposit of £500 for a prospective tenant Miss Sameneh Ghadami of the subject address at **Suite 1, 31 Woodstock Road, London NW11 8ES**. Subsequently a tenancy was entered into with effect from 8 October 2022 for a term of 12 months with Miss Sameneh Ghadami and Mr Bahram Seifollahzadeh ('the tenants').
4. Subsequently, 6 months' rent in advance was demanded by the applicant in the sum of £8,700 plus £1,450 deposit totalling £10,150. The holding deposit is said to have been credited on 6 October 2022 against the sums due from the tenants leaving a balancing payment of £9650.00 due for the tenants.
5. On about 22 August 2023 the respondent served a Notice of Intent to Issue a Financial Penalty alleging only £150 of the Holding Deposit had been returned to the tenants. Subsequently an (undisclosed) settlement agreement was entered into with the tenants in full and final satisfaction of the issues between them arising out of the subject property. The respondent then issued a Final Notice dated 24 April 2024 imposing a financial penalty of £5,000.

The hearing

6. As neither party requested an oral hearing this application was determined on the documents provided by both parties.

The applicant's case

7. The applicant asserted:
- (i) The Holding Deposit of £500 was credited against the rent due as permitted by para. 6 of Schedule 2 of the 2019 Act.
 - (iii) By imposing the maximum fine possible of £5,000 the respondent had little or no regard to the facts of to the guidance on fines and has failed to provide an explanation of how the fine was calculated.
 - (iii) In any event, the fine is excessive and disproportionate to the severity of the offence alleged.
8. The applicant also provided the tribunal with a Reply to top the respondent's Grounds of Opposition to this appeal. The applicant asserted the respondent had failed to provide evidence to support its assertions that £350 of the Holding Deposit had not been returned; that the tenants had not consented to the £500 being credited against the six months' rent due or that had followed its own policies in deciding upon the amount of the fine.

The respondent's case

9. The respondent alleged that the applicant had required the tenants to pay a prohibited fee from a tenant contrary to s.2 of the 2019 Act. The respondent alleged that in addition to the £10,150 paid on 7 October 2022 a sum of £500 by way of a Holding Deposit had been received from the tenants. Of this holding deposit only £150 was returned to the tenants.
10. The respondent asserted that the sum of £500 exceeded the maximum allowed of one week's rent of £334.62 and £165.38 was in any event a prohibited payment. A credit of the holding deposit against the first rent instalment due is only permitted if the tenants consent to this.
11. The applicant retained £350 of the Holding Deposit as an administration fee and charged the tenants 6 months rent of £8700.00 and £1,450.00 by way of a deposit.
12. In setting the amount of the Financial Penalty, the respondent asserted it had regard to its enforcement policy including fines and consulted the relevant leads for Estate Agents and Letting Agents.

The tribunal's reasons

13. This matter is dealt with as a re-hearing, of the respondent's decision to impose a Financial penalty. Therefore, is for the respondent to prove that an offence has been committed under the relevant provision of the 2019 Act.
14. The tribunal finds the respondent has failed to prove the offence alleged has been committed by the applicant. Although, the tribunal finds that a payment in excess of one week's rent was charged to the tenants, this is not the offence alleged for which a Financial Penalty has been imposed.
15. The tribunal is satisfied that the Deal Sheet dated 06 October 2022 relied upon by the applicant, shows a credit of £500 to the tenant's account and that the payment due of six month's rent of £8,700 and the £1,450 deposit was as a consequence, reduced to a balancing payment due of £9650.00. In the absence of any evidence to the contrary, the tribunal is satisfied the tenants either expressly or implicitly consented to this course of action.
16. The respondent failed to provide any witness statement from the tenants that asserted they had not been refunded the whole of the £500 holding deposit.
17. The tribunal finds the respondent has failed to demonstrate the steps taken to follow its own enforcement policy or how it had regard, if at all, to the submissions of the applicant before it imposed a fine of £5,000.
18. In conclusion the tribunal finds the respondent has failed to prove an offence as alleged has been committed by the applicant. In any event, the tribunal finds the amount of financial penalty imposed excessive and unreasonable.

Name: Judge Tagliavini

Date: 3 December 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).