FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/HTC/2024/0001**
Property	**:**	**Apartment 306 Quay Central** **9 Jesse Hartley Way** **Liverpool** **L3 0AB**
Applicant	**:**	**Mohab Hasanein**
Respondent	**:**	**Complete Prime Residential Limited**
Type of Application	**:**	**For recovery of all or part of a prohibited payment or holding deposit –Tenant Fees Act 2019**
Tribunal Member	**:**	**Judge L. F. McLean**
Date of Decision	**:**	**28th November 2024 (without a hearing, pursuant to Rule 31(2) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013)**

DECISION

DECISIONS OF THE TRIBUNAL

The Tribunal makes the Order below.

ORDER

On or before 13th December 2024, the Respondent must repay £225 to the Applicant, being the whole of the holding deposit paid by him in respect of Apartment 306 Quay Central, 9 Jesse Hartley Way, Liverpool L3 0AB.

REASONS

Tenant Fees Act 2019

1. A tenant of residential premises in England may lawfully be required to pay (in addition to rent) a refundable tenancy deposit and/or a refundable holding deposit. However, the Tenant Fees Act 2019 ("the Act") prohibits landlords and letting agents from requiring tenants to make many other payments in connection with a tenancy.

2. If a tenant has made a prohibited payment, the Tribunal may order the landlord or letting agent to repay it.

3. The Act also deals with the treatment of holding deposits and the circumstances in which they must be repaid. Where appropriate, the Tribunal may order recovery of a holding deposit.

Holding deposits

4. A landlord or letting agent may require a person proposing to take a tenancy to pay a holding deposit before the tenancy is granted. This must not exceed one week's rent.

5. The general rule is that a holding deposit must be repaid within seven days if:

   (a) the landlord and the tenant enter into a tenancy agreement,

   (b) within 15 days of payment of the deposit, the landlord decides not to enter into a tenancy agreement, or

   (c) the landlord and the tenant fail to enter into a tenancy agreement before the end of that 15-day period.

6. There are obviously exceptions to the duty to repay a holding deposit. For example, a holding deposit does not have to be repaid following the grant of a tenancy if the tenant has agreed to the deposit being applied towards the first payment of rent or towards the tenancy deposit. Nor is

a holding deposit repayable if, within the 15-day period mentioned above, the prospective tenant either notifies the landlord or letting agent that they have decided not to enter into a tenancy agreement, or they fail to take reasonable steps to enter into a tenancy agreement. One of the grounds specified in the Act as to circumstances when the holding deposit does not need to be repairs is Paragraph 10 of Schedule 2 to the Act, which states:-

> *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.*

7. Paragraph 13, referred to above, provides as follows:-

> *13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—*
>
> *(a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or*
>
> *(b) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.*

8. The full text of Sections 1 and 2 of the Act are not reproduced here, but relate to landlords or their agents requiring prospective tenants to make payments which are prohibited by the Act. Section 3 of the Act provides that any payment is a prohibited payment unless it is expressly permitted by Schedule 1 to the Act or associated regulations. Paragraph 3 of Schedule 1 states that a holding deposit is permitted if it is paid "*with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2*".

Facts of this case

7. At 14:48 on 29th November 2023, the Respondent sent an email to the Applicant in which it made a conditional offer of tenancy of the Property, subject to references and payment of a holding deposit. The Applicant was hoping to rent the Property on an assured shorthold tenancy for £975 per calendar month. The proposed tenancy start date offered by the Respondent was described as "*Move in approx 8th Feb 2024*". The Applicant was invited to pay a holding deposit, which appears to have been the sum of £225 (exactly one week's rent) and was informed that

the Property would be taken off the market once the holding deposit was paid. The implication was that until that time, the Property would continue to be advertised as available for letting.

8. The offer email contained the following information about how the holding deposit would be treated:

> *Please review the attached documents for information on the full process.*
>
> *The holding fee is one weeks rent and this is then credited back to your final payment as long as referencing is successful and you proceed with the property – please note that if you withdraw from the property after this fee has been paid, or fail the referencing process, then it is non-refundable.*

9. It appears that the Applicant paid the holding deposit to the Respondent at some point between 29th November and 4th December 2023.

10. The Applicant subsequently contacted the Respondent by telephone. It appears from the subsequent chain of emails that he said he could not afford to take the tenancy to begin from 8th February 2024, and requested that the start date be postponed by around 1 month, because he was already tied into a 6 month fixed term tenancy contract of his existing home and he could not negotiate an early release from it. There then followed an exchange of emails between the Applicant and the Respondent's staff.

11. At 16:54 on Monday 4th December 2023, a member of the Respondent's staff sent the following email to the Applicant which included the following:

> *Following your call last week, I have managed to speak to the landlord of 306 Quay Central.*
>
> *The landlord has advised that he will not be prepared to wait and additional month for you to move into the apartment as he will be loosing out on 1 months rent, this is exactly what I advised you.*
>
> *If you have not made a decision by Friday we will start to remarket the property and you will forfeit your holding deposit.*

12. It is noted that the Friday referred to was presumably 8th December 2023. The Applicant replied at 21:29 on the 4th December, saying:

> *as much as I really love this apartment, I can't afford to pay both in one month and I unfortunately must withdraw my application.*

Apologies for wasting your time please extend this apology to the landlord as well.

If a similar apartment is on the market, please let me know as I'm still looking to move but in March instead.

13. The Applicant received a very brief reply to the above, by email at 10:25 on 5th December, saying:

No problem. Thanks for letting me know.

14. From 19:03 on 10th December 2023, the Applicant tried to get the holding deposit paid back. This was refused by the Respondent, who referred to the original offer email of 29th November and stated that the holding deposit was non-refundable if he withdrew his application. The Applicant lodged a formal complaint about this decision, in which he made the following key points:-

- He had not been aware of the "complication" regarding his own tenancy;
- It is not lawful for a fee to be paid in respect of the landlord's costs of obtaining references for a prospective tenant, which was the reason given to him as to why his holding deposit would not be returned;
- The Applicant was required to accept the tenancy by 8th December 2023 and was told this "in a harassing way" given that he considered that he was entitled to a return of his deposit if they had been unable to reach an agreement – in his words, he was "*bullied to withdraw my application in a way that makes it look like I wanted to withdraw my application because I changed my mind*".

15. The Applicant's complaint was refused by the Respondent on the same basis as previously, in that:-

- He had been notified that the holding deposit would be withdrawn if he withdrew;
- The landlord's refusal to postpone the tenancy start date was reasonable;
- The landlord had incurred costs in the referencing process – although this was not itself a prohibited fee, it was reasonable for the landlord to retain the holding deposit in these circumstances.

16. In corresponding with the Tribunal, the parties have each submitted written statements which broadly accorded with the exchanges of emails set out above, and the response to the Applicant's complaint.

Discussion

17. I have determined this matter upon consideration of the application form and supporting documents together with the written representations provided by the Respondent in reply. The outcome does not depend upon disputed questions of fact and I am satisfied that it is appropriate to determine the application without a hearing.

18. Did the Respondent require the Applicant to make a prohibited payment? On balance, I think that it did. The Act prohibits landlords and agents from demanding payment of fees for obtaining references or background checks. Although the Respondent or its client landlord incurred those costs once the holding deposit was paid, they said that the holding deposit would be credited towards the tenancy deposit / first month's rent instalment, if the tenancy was entered into. That much was a correct interpretation and application of the rules. Where the Respondent appears to be fundamentally mistaken, however, is in its assertion in the email of 29th November 2023 that the holding deposit was non-refundable if the Applicant failed the referencing process. This is expressly forbidden according to the Government's "*Tenant Fees Act 2019: Guidance for landlords and agents*", which states at page 41:-

> ***Failed reference check***
>
> ***Q. Can I retain a tenant's holding deposit if they provided correct information, but I do not consider that their references are good enough?***
>
> *No. If a tenant has provided factually correct information which you have requested, but you do not consider their references to be sufficient in order to let the property, the tenant is entitled to a full refund of their holding deposit.*
>
> *You cannot retain a tenant's holding deposit merely because you do not consider their references to be satisfactory. This also applies where you are not able to let the property for any other reason which is not the tenant's fault. Failing a reference check should not automatically disqualify a tenant from renting a property.*
>
> *We encourage landlords and agents to consider on a case-by-case basis whether an adverse credit history or bad references affect someone's suitability as a tenant. You may ask a tenant to justify information which calls into question their credibility – such a previous County Court Judgement (CCJ).*

19. Although the above is only guidance, and not itself legally binding, I consider it to be a correct interpretation of the provisions of the Act. Also, whilst the Respondent's wrong intentions in this regard are perhaps not the most egregious breach of the Act, its conduct was still unfair and misleading. Accordingly, the Respondent did not accept the holding deposit "*with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2*" and it was a

therefore a prohibited payment. This triggers the exclusion under Paragraph 13(a) of Schedule 2.

20. In the alternative, did the Respondent act unreasonably (Paragraph 13(b))? This is another issue which in which there are factors on each side. The Applicant was at least partly at fault – he did not check whether he could be released from his existing tenancy before the start date proposed by the Respondent, nor did he think to check with the Respondent whether the proposed date could be amended before he paid the holding deposit, if he had not been sure of this. The tone of the Respondent's employees appears to have been generally courteous. The Respondent acted on the landlord's reasonable instructions that a whole month of lost rent was not sustainable for him.

21. The only problem then arises with how the Respondent's employee, Shamira Dar, asked the Applicant to respond. She said "*If you have not made a decision by Friday we will start to remarket the property and you will forfeit your holding deposit.*" It is not entirely clear when the holding deposit was paid, but it was no earlier than 29th November 2023. The 15 day deadline for reaching an agreement was therefore not until Wednesday 13th December at the very earliest, and the deadline imposed by the Respondent of Friday 8th was not appropriate. The threat to forfeit the deposit if a decision was not made was unreasonable, inasmuch as the Respondent had no reasonable basis to make that demand. The Act is clear that if no agreement is reached, and the prospective tenant has not withdrawn their request for a tenancy, then the holding deposit has to be refunded. Ironically, if the landlord had followed through on the threat and revoked the tenancy offer first, between Friday 8th and Wednesday 13th December, then this would have triggered the clear obligation on the Respondent to refund the holding deposit in full. Instead, the Respondent's undue pressure on the Applicant to make a choice before then had the effect of prompting his decision to withdraw the application prematurely, which was prejudicial to his statutory rights, and had echoes of high pressure sales tactics. The email also contained an ambiguity that the Applicant would lose his holding deposit if he didn't make a decision, which could be interpreted as at least a partial implication that if he did make a decision of some sort, his holding deposit might not be at risk. Again, although this is perhaps not the worst conduct which prospective tenants might encounter, it crossed the threshold of what is reasonable to do.

15. Fundamentally, the Respondent seems to have misunderstood what the purpose of a permitted holding deposit is, under the new regime introduced by the Act. It is to take the property off the market to enable the proposed tenancy to be concluded without the pressure of competing bids, but in such a way as to deter obvious time-wasters. A prospective tenant who is willing to pay a substantial holding deposit is unlikely to be out to waste the time of the landlord or their agent, but the landlord or their agent bears the risk that a prospective tenant might not pass a credit reference or that they simply might not reach agreement quickly. If an agreement is not reached between the parties within two weeks,

through no particular fault of either of them, then it is to be refunded and that is that. The landlord is then free to advertise the property afresh, and the prospective tenant will have lost the benefit of the exclusivity period – that is the incentive to the prospective tenant to reach agreement swiftly, not the threat of losing their holding deposit hanging over their head. As such, holding deposits can no longer be allowed to act as an insurance policy to cover the landlord's referencing fees just because a deal falls through, and the landlord may simply have to absorb the cost in such circumstances.

Outcome

18. For these reasons, the Respondent letting agent is ordered to repay the holding deposit of £225 to the Applicant. It must do so on or before 13th December 2024.

19. This order is made under section 15(9) of the Tenant Fees Act 2019 and, by virtue of section 15(11), it is enforceable by order of the County Court as if the amount payable under this order were payable under an order of that Court.

Signed: L F McLean
Judge of the First-tier Tribunal
Date: 28th November 2024

Rights of appeal

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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