|  |  |
| --- | --- |
| http://t3.gstatic.com/images?q=tbn:ANd9GcT3B2-0yhUslp2gDk8IDYmAtmofdlryN0kCWsWkFXHQV2U4Pprp | **FIRST-TIER TRIBUNAL**  **PROPERTY CHAMBER**  **(RESIDENTIAL PROPERTY)** |

**Case Reference : CHI/21UG/HTC/2024/0003**

**Property : 12, Village Close, Bexhill, East Sussex,**

**TN39 4TF**

**Applicant : Katarzyna Halka**

**Representative : In person**

**Respondent : Oliver & Bailey Property Management Ltd**

**Representative : Emma Bailey, Lettings Manager**

**of the Respondent**

**Type of Application : Application by the tenant under section**

**15(3) and (5) of the Tenant Fees Act 2019**

**Tribunal Members : Judge Paul Letman MBE**

**Date and venue : Havant Justice Centre, the parties**

**appearing by video link**

**Date of Decision : 23 September 2024**

|  |
| --- |
| **DECISION AND ORDER** |

**Introduction**

1. By an application dated 22 November 2023 (‘the Application’) the Applicant seeks under sections 15(3) and (5) of the Tenant Fees Act 2019 (the TFA 2019) an order for the recovery of a holding deposit in the sum of £210 (the holding deposit).
2. By the Application the Applicant disputes that there were any grounds for the Respondent to retain the holding deposit under paragraph 9 of Schedule 2 of the Act (false or misleading information) and contends that in any event the Respondent failed to give her a notice in writing and within time for the purposes of paragraph 5(2)(a) of Schedule 2 to the Act, so as the holding deposit is repayable.
3. Directions were made on 17 July 2024 for the conduct of the Application. Pursuant to these, the Respondent served a witness statement dated 5 August 2024 of Emma Bailey setting out the course of dealings between the parties and detailing the false information relied upon and the explanations for the landlord’s decision not to proceed that were provided.
4. No reply was filed by the Applicant and the matter came before this Tribunal for determination on 10 September 2024. The parties each attended the hearing remotely.

**The Law**

1. For completeness, the relevant sections and paragraphs of the Tenant Fees Act 2019 are annexed hereto at Annex A.

**The Hearing**

1. At the hearing the Applicant presented her application. She largely accepted the chronology of events set out in the witness statement of Ms Bailey. That on 3 May 2023 she registered her details with the Respondent. That on 9 May 2023 she provided further details relating to herself and her partner, Stuart, for the purpose of applying for a tenancy of 12, Village Close, at which time she entered and signed a holding agreement with the Respondent (setting a ‘provisional move in date’ of 1 June 2023) and paid the holding deposit of £210. Further, the Applicant accepted that she subsequently completed an online form relating to the proposed letting via Vouch, a national referencing company.
2. Notably, when it was put to the Applicant that she and her partner had provided erroneous information in their application, she ultimately accepted that in certain respects this was the case. Firstly, she accepted that they had represented they were renting privately rather than living in a house share with friends or family, when in fact they were living with Stuart’s mother. Thus, whilst at one point she suggested she thought she and Stuart might have been on a tenancy at the mother’s address, she produced no evidence of this and did not maintain this allegation.
3. Secondly, the Applicant accepted that although Jane Purcell had been named on their application as their landlord for the purposes of a reference, this too was not correct because she was not the landlord but Stuart’s mother. As for the third matter raised and relied upon by the Respondent, the statement that neither she or Stuart had a pet, the Applicant explained that whilst Stuart did have a pet, they did not intend to take it to 12, Village Close. However, she accepted that the simple statement made on 9 May 2023 and to Vouch, that neither or them had pets, was factually incorrect; as plainly it was.
4. In the light of the admissions detailed above, the Applicant accepted also that there were grounds under paragraph 9 of Schedule 2, based upon the information provided and her conduct in providing that information, which the landlord was reasonably entitled to take into account in deciding whether to the grant the tenancy. In effect, that the landlord was within its rights to decide not to proceed, as it did so decide on 18 May 2023. The Applicant being informed of that decision, as she recounted, in a telephone call about 3pm on the same day with Tracy Lyons, the lettings negotiator with whom the Applicant was dealing.
5. The Applicant conceded before the Tribunal, therefore, that she was relying rather on her case that the Respondent had failed to provide written notice explaining why the Respondent intended not to repay the holding deposit within time. In this regard the Applicant relied on the fact that no written notice providing such an explanation was provided until Ms Lyons’ email dated 26 May 2023. This notice she contended was outside the ‘relevant period’ under paragraph 5(2)(a) of the Schedule 2 applicable to a case where the a landlord decides not to enter into the tenancy agreement before the deadline for the agreement; being ‘*the period of 7 days beginning with the date on which the landlord decides not to do so.’*
6. As regards the Respondent’s case, they acknowledged the admissions made by the Applicant and the concession above and confined their case accordingly to the issue of notice. Ms Bailey referred to the explanation given on the telephone on 18 May 2023 itself by Ms Lyons of the reasons for the landlord’s decision. To the best of her knowledge that had fully communicated the reasons; although the Applicant suggested that she had been left with the impression that it was the lack of a guarantor that was most material. In any event though, Ms Bailey accepted, fairly and correctly in the view of this tribunal, that the oral explanation given could not suffice as *‘a notice in writing’* for the purposes of paragraph 5(1)(b) of Schedule 2.
7. For this purpose Ms Bailey relied instead upon the email of Ms Lyons dated 26 May 2023 (which she read out to the tribunal and) which identified the matters of complaint admitted (above) by the Applicant and taken into account by the landlord and explained why the Respondent did not intend to repay the holding deposit. As to the timing of the notice, she submitted that the said email was within time. That *‘.. 7 days beginning with the date on which the landlord decides’*, should be construed as excluding the day of the decision, Thursday 18 May 2023, so that a written notice the following Friday 26 May 2023 was within the period of 7 days allowed and accordingly in time.
8. In reply the Applicant did not dispute that the 26 May 2023 email was a sufficient notice for the purposes of paragraph 5(1) of Schedule 2, but maintained rather that it was given after the statutory time limit and was too late.

**Determination**

1. Although the Application sought to contest the allegations that the Applicant and her partner had provided false or misleading information to the Respondent letting agent in relation to their current living arrangements, whether either of them kept a pet and the identity of their landlord, as recorded above she did not pursue this case at the hearing. Rather, the Applicant admitted that she and her partner had provided erroneous information in these respects and that the landlord was in effect entitled to take into account the difference between the information provided and the correct information in deciding not to grant the tenancy for which they had applied.
2. In my judgement the Applicant was correct to do so; I would have had little hesitation in determining these matters against the Applicant. Equally, she was right it seems to me to accept that the email of 26 May 2023 was, subject to the issue of timing, a notice in writing explaining why the Respondent did not intend to repay the holding deposit for the purposes of paragraph 5(1)(b); and if there were any doubt in this regard I so find.
3. The sole issue remaining for determination, therefore, is whether the said notice was in time. In my judgement it was not. Although the argument made by Ms Bailey appears persuasive, that if the date of decision is taken into account as day 1, particularly where the decision may well have been taken later on that day, this leaves only 6 days to serve a notice, the difficulty here is in the number of days. Even if I were to accept this submission (although I am inclined to think the 7 days should begin on the date of decision as paragraph 5 states), the period of 7 days will have ended on Thursday 25 May 2023. Friday, 26 May 2023, was the eighth day.
4. The point is a technical one and may seem harsh to the Respondent, particularly where it may be said that the Applicant is wholly undeserving, having provided the false information that she did. However, in what is a highly regulated area, and rightly so, it is necessary for landlord’s and their agents to comply with the relevant statutory provisions. This was not done and accordingly the Respondent as the person who received the holding deposit must repay it pursuant to paragraph 5 of Schedule 2 and I shall so order (see below).

**ORDER**

UPON the Applicant’s application dated 22 November 2023 (‘the Application’) seeking an order under sections 15(3) and (5) of the Tenant Fees Act 2019 (‘the Act’) for the recovery of a holding deposit in the sum of £210 (‘the Holding Deposit’)

AND UPON hearing (remotely) from the Applicant in person and Ms Bailey on behalf of the Respondent

AND UPON the tribunal determining for the Reasons given that the Respondent as recipient of the Holding Deposit did not give a notice in writing explaining why it did not intend to repay it within the prescribed time limit under paragraph 5 of Schedule 2 of the Act

**TAKE NOTICE THAT THE TRIBUNAL ORDERS AS FOLLOWS:**

1. The Respondent must forthwith repay to the Applicant the holding deposit paid on or about 9 May 2023 in the sum of £210.

**This Order**

**This is a formal order of the Tribunal which must be complied with by the parties.**

Dated as above.

**RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.

**Communications to the Tribunal MUST be made by email to** [**rpsouthern@justice.gov.uk**](mailto:rpsouthern@justice.gov.uk)**. All communications must clearly state the Case Number and address of the premises.**