



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

Case Reference : **BIR/00FN/HTC/2024/0004**

Property : **37 Turner Rise, Oadby, Leicester LE2 5SH**

Applicant : **Lai Ki Michelle Chan**

Respondents : **Dr Shamser Chohan and Mrs K Shohan**

Representative : **NAS Properties**

Type of Application : **Recovery of all or part of a prohibited payment or holding deposit: Tenant Fees Act 2019**

Tribunal Members : **Judge T N Jackson**

Date of paper determination : **19 September 2024**

Date of Decision : **19 September 2024**

DECISION

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Decision

The Tribunal makes no order under section 15 of the Tenant fees Act 2019 for the recovery of a prohibited payment or holding deposit.

Reasons for decision

Introduction

1. By application dated 14 May 2024, the Applicant has applied under section 15 of the Tenant Fees Act 2019 for the recovery of £677 from the Respondent as a prohibited payment or holding deposit.
2. The Tribunal gave directions on 8 July 2024 providing for the matter to be determined on the papers unless either party made a request for a hearing. No request was made and I did not consider a hearing was necessary to determine the issue fairly and justly, particularly in view of the amount in issue.

Background

3. The Applicant and Koon Chung Larry Mak occupied the Property under a tenancy agreement dated 12 May 2023 for a term of seven months from 1 June 2023 to 31 December 2023 at a rent of £1295 per calendar month. The Applicant paid a deposit of £1295 which the Respondent placed in a Tenancy Deposit Scheme with MyDeposits.
4. The Applicant vacated the Property on 14 February 2024 and the Property was inspected on the same date. The Respondent produced a Check Out Form which identified deductions totalling £677 comprising elements for cleaning £80, damages £240, redecoration £185 and 'other' £172. Following email exchanges between the Applicant and the property manager, the total deductions were reduced.

Tenancy Agreement

5. The Tenancy Agreement provides as follows regarding the deposit:

'B3- Procedure for releasing the deposit at the end of the tenancy

As soon as is practicable at the end of the tenancy, the member should inform the tenant whether any deductions are proposed.

If there is no dispute, the deposit will be allocated according to the deductions agreed. If agreement cannot be reached, any of the parties can refer the matter to the Tenancy Deposit Scheme for adjudication.

B4- Purpose of the Deposit

The Deposit has been taken for the following purposes:

Any damage, or compensation for damage, to the premises its fixtures and fittings or for missing items for which the tenant may be liable, subject to an apportionment or allowance for fair wear and tear, the age and condition of each and any such item at the commencement of the tenancy, insured risks and repairs that are the responsibility of the landlord.

The reasonable costs incurred in compensating the landlord for, or for rectifying or remedying any major breach by the tenant of the tenant's obligations under the tenancy agreement, including those relating to the cleaning of the premises, its fixtures and fittings.

Any unpaid accounts for utilities or water charges or environmental services or other similar services or Council Tax incurred at the property for which the tenant is liable.

Any rent or other money due or payable by the tenant under the tenancy agreement of which the tenant has been made aware and which remains unpaid after the end of the tenancy.

The deposit can be used to indemnify the landlord against any other loss not covered above

Joint tenant consent to adjudication

There being multiple tenants, each of them agrees with the other(s) that any one of them may consent on behalf of all the others to use alternative dispute resolution through a tenancy deposit protection scheme to deal with any dispute about the deposit at the end of the tenancy.'

The Deposit Protection Certificate

6. The Certificate states that the deposit is protected from 12 May 2023 until 3 months from the date the tenant vacated the property.

Submissions

Applicant

7. The Applicant submits that the £677 deductions included many unreasonable charges, with many amounts being charged at higher-than-market rates. Some of these charges were also the result of misinformation from the estate agent. After several email exchanges, the property manager responded that some charges could be waived and others reduced. The last email the Applicant sent on 8 May 2024 expressed that the charges were still unfair and requested the landlord to charge fees at fair market prices and with equal percentages. The Applicant further submits that, according to the estate agent's notice, on the same day the Applicant moved out of the unit, new tenants had already moved into the unit. The Applicant therefore has doubts about the charges and says that they are likely for unfinished work or services not provided.

Respondent

8. The Respondent's representative says that the £677 claimed by the Applicant is in relation to their security deposit. When the tenants moved out of the Property, the security deposit was returned to them, minus the deductions in the Check Out Form. The Applicant was provided with a copy of that Form at the time and the parties have discussed its contents. The security deposit was held in a government backed Tenancy Deposit Protection ("TDP") scheme, as required.
9. The security deposit in question is not a holding deposit, but instead is a full security deposit, protected by a TDP and therefore does not fall part of the Tenant Fees Act 2019. For this reason, the Applicant's claim for £677.00 should be rejected by the Tribunal.
10. The representative provided a copy of the Tenancy Agreement, Check Out Report and Deposit Protection Certificate.

Jurisdiction

11. It is only appropriate for the Tribunal to consider the merits of the points raised by the parties if the Tribunal is satisfied that the application falls within its jurisdiction under section 15 of the Tenant Fees Act 2019, ('the 2019 Act')

12. Section 15(3) provides-

'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.'

13. I have concluded that this dispute is not one to which the 2019 Act applies, and so I cannot make a determination in relation to it.
14. The purpose of the Tenant Fees Act 2019, is to ban letting fees and other fees that make renting more expensive, and to make the costs of renting clearer to tenants and prospective tenants.
15. The 2019 Act makes it unlawful for a landlord to require a tenant to make a payment, enter into a contract or make a loan for various listed purposes, such as in connection with the grant, renewal or termination of a tenancy. It makes provisions in tenancy agreements to pay such fees not binding. It applies to such payments or provisions in tenancies whenever they were made, although there are some differences between the treatment of payments and tenancy conditions made before the 2019 Act came into effect.
16. Schedule 1 of the 2019 Act sets out permitted payments, namely rent; tenancy deposit; holding deposit; payment in the event of a default; payment of damages

for breach of a tenancy agreement; payment on variation, assignment or novation of a tenancy; payment on termination of a tenancy: payment in respect of council tax; payment in respect of utilities; payment in respect of a television licence and payment in respect of communication services.

17. I find that the tenancy was an assured shorthold tenancy and that payment of the £1295 deposit was a permitted payment under paragraph 2 of Schedule 1 of the 2019 Act as it was clear from the provisions of the tenancy agreement that it was-

‘money intended to be held (by a landlord or otherwise) as security for-

- (a) the performance of any obligations of a tenant, or
- (b) the discharge of any liability of a tenant.’

and it was below the maximum figure allowed.

18. I have not been provided with any evidence by the Applicant of any other payment she has made, (although I assume rent has been paid). The application to the Tribunal relates only to the withholding of part of the tenancy deposit.

19. The current system for the regulation of tenancy deposits in assured shorthold tenancies is that provided for in the Housing Act 2004, Part 6, Chapter 4. This, broadly, makes it compulsory for tenancy deposits taken by landlords to be dealt with in accordance with an authorised tenancy deposit scheme. The schemes include dispute resolution procedures.

20. There is some cross-over between the two schemes, in that the 2019 Act makes the payment of a tenancy security deposit to a landlord a permitted payment, (subject to a cap). However, the operation of a tenancy deposit, including in particular what may or may not be withheld from a tenant, is covered by the system of authorised tenancy deposit schemes put in place by the Housing Act 2004.

21. It is clear to me that the policy of the 2019 Act is that the regulation of tenancy deposits, once paid, should continue to be determined by the 2004 Act system of authorised tenancy deposit schemes. There is nothing to suggest that the 2019 Act intends that the Tribunal should also independently have jurisdiction over disputes relating to the withholding of a tenancy deposit, in addition to the dispute resolution schemes authorised under the 2004 Act. Had that been the intention, I would have expected it to have been made clear on the face of the Act.

22. The Explanatory Notes to the 2019 Act refer to the 2004 system as applying to tenancy deposits. Explanatory Notes are provided by the Government department responsible for an Act. They are not part of the Act, so do not have the force of law, but can be of assistance in understanding the policy of an Act.

23. The statutory guidance to which enforcement authorities are required to have regard (Tenant Fees Act 2019, section 6(4)) states that “*The Act does not affect the landlord’s entitlement to recover damages for breach of the tenancy agreement by way of a deduction from the tenancy deposit or through the courts ...*” The Guidance is not authoritative as to the proper interpretation of the Act, but again it is indicative of the policy of the Act.

24. I do not consider that the withholding of a tenancy deposit, or part of it, is the sort of transaction covered by the Tenant Fees Act 2019.
25. I do not consider that the withholding of part of a tenancy deposit can be considered to be a 'payment' by the Applicant, whether prohibited or not. I suggest that 'payment' requires some action on behalf of the Applicant which accords with the ordinary meaning of the word "payment", and is in line with common sense.
26. I do not consider that withholding part of a tenancy deposit is the landlord or agent requiring the Applicant to enter into a contract with a third party or make a loan in connection with the tenancy under section 1 of the 2019 Act.
27. I therefore determine that as there was no prohibited payment as defined by the Tenant Fee Act 2019, that I do not have jurisdiction to order the recovery of the withheld part of the deposit. The matter needs to be considered under the relevant dispute resolution scheme authorised under the 2004 Act, namely through MyDeposits. However, I note that the Deposit Protection Certificate states that the deposit is protected from 12 May 2023 until mid- May 2024 (3 months from 14 February 2024, the date the tenant vacated the Property) and the Applicant may be out of time in relation to the dispute resolution scheme. Alternatively, the Applicant may wish to take action against the Respondent in the County Court. She may wish to seek legal advice.

Costs

28. Neither party made an application for costs and I make no such order.

Appeal

29. 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 and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson