



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

Case reference : **BIR/17UG/HTC/2024/0002**

Property : **40 Albert Street Long Eaton NG10 1JZ**

Applicant : **Rafael Dias Avelino**

Representative : **None**

Respondents : **(1) Alan Gareth Colley of Erewash Estates
(2) Mr Peter Stead**

Representative : **Salman Alboloushi**

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

Tribunal member : **Judge C Goodall
V Ward BSc Hons FRICS – Regional
Surveyor**

**Date and place of
hearing** : **Paper determination**

Date of decision : **21/01/2025**

DECISION

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Background

1. On 13 February 2024, the Applicant applied to the Tribunal for an order that a holding deposit he paid to the Second Respondent of £460.00 to secure the renting of the Property should be repaid under the provisions of section 15 of the Tenant Fees Act 2019 (“the Act”).
2. The application was initially made against the First Respondent who was the agent to whom the Applicant initially applied to rent the Property. The First Respondent applied to be struck out as he was not the appropriate Respondent (i.e. the person to who received the payment – see Schedule 2 para 3 of the Act).
3. On 17 May 2024, the Tribunal reviewed the application and issued directions (“the Directions”) in which we stated that we were minded to strike out the application against the First Respondent for the reason set out above. We also directed that the Second Respondent should be added as a Respondent, as he was the person with liability under the Act to repay any deposit that might be repayable under the Act.
4. The Directions stated:

“It is highly arguable that:

- a. The holding deposit of £460.00 paid by the Applicant to Mr Peter Stead on 7 December 2024 is:
 - i. In relation to £345 of the holding deposit, automatically a prohibited payment (as a holding deposit exceeding one week’s rent is a prohibited payment – see Schedule 1 paras 3(2) and (3) of the Act), and
 - ii. As to the remaining £115 (one weeks rent) of the holding deposit, likely to be a prohibited payment, because:
 1. One weeks holding deposit is a permitted payment (para 3(1) of Schedule 1 or the Act);
 2. However, it must be repaid if the landlord and the tenant fail to enter into a tenancy agreement before the deadline for agreement (which is 15 days from payment of the holding deposit) (para 3(c) of Schedule 2 of the Act);
 3. But it does not have to be repaid under para 3(c) if the tenant notifies the landlord before the deadline for agreement that he has decided not to enter into a tenancy agreement, which the Applicant did (para 10 of Schedule 2 of the Act);
 4. But if the recipient of the holding deposit believes that para 10 applies, so that he does not have to return the holding deposit, under para 5 of Schedule 2 of the Act, he

must in fact repay it if he has not given the payer of the deposit notice in writing within the relevant period (which is 7 days beginning with the deadline for agreement date) that he intends not to repay it, and there is no evidence that such notice was given in this case.”

5. The Directions then provided that:
 8. “Within 14 days of service, the Second Respondent must provide a statement of case in writing to the parties and the Tribunal indicating whether he disputes the application for repayment of the holding deposit, and if so the grounds on which he relies, together with copies of any documents to be relied upon.”
6. The Directions also provided that:

“If a Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9 (7) and (8) of the 2013 Rules.”
7. The reference to the 2013 Rules is a reference to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
8. The Directions required that the First Respondent should disclose the address and contact details for the Second Respondent as these were not known to the Tribunal. The address was supplied on 24 May 2024 by the First Respondent and the Tribunal then wrote to the Second Respondent on 5 June 2024, sending him copies of the application, initial directions, submissions, and the Directions.
9. The Tribunal then received an email signed in the name of the Second Respondent but using the email address of the First Respondent. Attached to that email was an application on Form Order 1 (application for an order you want a tribunal judge to consider) requesting that the Directions be amended to record a claim for a sum of £2,530.00 “being the balance of the tenancy of £2,990.00 less the security deposit paid”. The grounds were that the Second Respondent claimed the Applicant had started his tenancy on 7 December 2023, but he terminated it on 14 December 2023. This meant a factual dispute arose as to whether the tenancy had started, or whether only a holding deposit had been paid, but no tenancy was in fact ever signed. The Second Respondent requested that “the courts make an order for this amount to be paid to me in full”.
10. The Tribunal therefore replied to the Second Respondent on 24 July 2024 using the email address from which he had sent his Order 1 form in these terms:

“Paragraph 8 of the Directions of 17 May 2024 required the Second Respondent within 14 days to provide a statement of case in writing to the parties and the Tribunal indicating whether he disputes the application for repayment of the holding deposit, and if so the grounds on which he relies, together with copies of any documents to be relied upon. The document dated 24 May 2024 does not comply with this direction or address the application before the Tribunal.

It should be noted that the Tribunal does not have jurisdiction regarding rent arrears which are a matter for the County Court.

The Second Respondent – Peter Stead - should comply with the direction above within 14 days or risk being barred under Rule 9 (7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Once you have been barred from taking any further part in these proceedings, under rule 9 (8), the Tribunal need not consider any response or other submission made by you and may summarily determine any or all issues against you.”

11. The Tribunal has not received any response to the email dated 24 July 2024, nor has the Second Respondent complied with Direction 8 of the Directions.

Discussion

12. The Second Respondent has failed to comply with Direction 8 of the Directions. The Directions and the Tribunal’s email of 24 July 2024 also made it clear that failure to comply could lead to the Respondent being barred from taking any further part in the proceedings.
13. The consequence of being barred is that the Tribunal may summarily determine all issues against the Respondent (see Rule 9(8) of the Rules).

Decisions

14. As foreshadowed in the Directions, we determine:
 - a. That the application against the First Respondent be dismissed;
 - b. That the Second Respondent be barred from taking any further part in the proceedings;
 - c. That upon consideration of the papers submitted by the Applicant, we determine summarily that the Second Respondent must repay £460.00 to the Applicant within 7 days of the date of this Decision. Non-payment is enforceable by order of the county court as if the order were payable under an order of that court.

Appeal

15. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)