



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00EW/HTC/2023/0005

Property : 25 Westminster Road, Chester CH2
3BB

Applicant : Dr Craig Prescott

Representative : N/A

Respondent : Mr Gary Richards

Representative : N/A

Type of Application : For recovery of all or part of a
prohibited payment: Tenant Fees Act
2019

Tribunal Members : Regional Surveyor N. Walsh
Judge J. Holbrook

Date and venue of : 18 June 2024 – remote Video Hearing

Date of Decision : 19 June 2024

DECISION

DECISION

The Applicant's application for an order for the recovery of a prohibited pursuant to section 15 of the Tenant Fees Act 2019 ("the 2019 Act") is refused.

REASONS

Background

1. The Tribunal received an application, dated 3 September 2023, from Dr Craig Prescott under section 15 of the Tenants Fees Act 2019 ("the 2019 Act"). The Applicant having been an assured shorthold tenant of 25 Westminster Road, Chester CH2 3BB ("the Property") up until 18 August 2023. The Respondent, Mr Richards, being the freehold landlord.
2. The application form, supporting documents and the parties' submissions confirm that a payment of £995.00 was made by the tenant to the landlord prior to expiry of the term of the original assured shorthold tenancy (8 July 2023) and upon the tenant extending the term of the tenancy by verbal agreement to 18 August 2023. The Applicant tenant alleges that this payment constituted a prohibited payment within the terms of the 2019 Act.
3. On 14 February 2024 a Tribunal Legal Officer issued directions for the Respondent to reply and for a determination to be made on the basis of the parties' written submissions. Following a review of the parties' submissions the Tribunal considered that it would be necessary to make a finding of fact as to the nature and circumstances of the payment of £995.00. By way of a Case Management Note dated 9 April 2024, Judge Holbrook ordered that the mode of determination would be by video hearing to permit oral evidence to be given from the parties.
4. The Tribunal is grateful to the parties for their attendance and for their oral evidence, which succinctly and clearly clarified the circumstances to the making of the payment.

Law

5. Section 1 of the 2019 Act details prohibited payments
6. Section 15 states that the relevant person may make an application to the First-tier Tribunal for the recovery of a prohibited payment from the landlord.
7. Schedule 1 to the 2019 Act contains a list of permitted payments, paragraph 5 deals with payments for damages and states:

“A payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person is a permitted payment.”

The hearing and oral submissions

8. The Applicant explained that he and the landlord had met on 30 June 2023 and had a very amicable and friendly discussion over a coffee at a local café, having first met at the Property. The Applicant outlined that on 30 June they agreed that his deposit should be returned in full without any deductions. The text received from the Respondent the following day on 1 July 2023 came as a surprise because the Applicant did not consider that he was liable for any of the items of damages being claimed.
9. The Applicant explained that because he did not wish to jeopardise securing a good landlord reference from the Respondent, which he felt he needed to secure his next tenancy in London and to avoid a difficult situation developing while he still resided at the Property, he felt compelled to pay the Respondent the £995.00. That being the total amount of his original deposit, which was released from the tenant deposit scheme on or around 1 July 2023. The Applicant considered that the most appropriate route to recover the monies was via the 2019 Act because he considered the payment to be a prohibited under the Act.
10. The Applicant confirmed that he was aware when making the payment that a payment for damages for breaches of the tenancy agreement was a permitted payment, but he did not consider that he was liable for any of the items claimed.
11. The Respondent outlined that the house is a small house and when he met the Applicant at the Property on 30 June, he was quickly able to identify the works that needed to be done and which the Applicant, as the tenant, should be liable for. He claimed that the Applicant fully accepted his liability for these works and agreed to make the payment of £995.00 to the Respondent in full and final settlement, knowing that the damages would total in excess of that sum.
12. The Respondent asserted that it was only when he had supplied his landlord's reference that this position changed, and he then received an aggressive 'pre-action' letter from the Applicant. When asked by the Tribunal why he had not simply retained the deposit via the Tenants Deposit Scheme, the Respondent explained that this was what he had agreed with Dr Prescott and having had up until then an excellent relationship with him, he trusted him.

Determination

13. The Tribunal explained to the parties at the outset that for the purposes of this application it was not necessary for the Tribunal to make findings as to whether or not the Applicant should be liable for any or all of the damages, and we would not be doing so. Indeed, the Tribunal does not possess the necessary jurisdiction to do so. The Tribunal's sole focus is in understanding the nature and circumstances of the payment. Put simply why was it requested and why was it paid?
14. The oral evidence before the Tribunal is incontrovertible. The Respondent requested the payment from the Applicant for compensation for the damages which he alleged Dr Prescott was responsible for under the terms of his tenancy. The Applicant received a text on 1 July from the Respondent setting out the works required. While the Applicant says he disputed any liability for these works he nevertheless paid the sum of £995.00 for that express reason and without protest at that time. The Tribunal accepts Mr Richards account that the Applicant agreed to pay this sum in lieu of effecting these repairs.
15. We find it surprising that while the Applicant states that he was aware at the time that the payment for damages was a permitted payment, this was the only permitted payment not identified in his written submissions. It does not appear credible to us that the Applicant did not know that works of repair were required to the property, such as that caused by the Applicant on cutting the burglar alarm's cable. Nor that the Respondent landlord was expecting him to pay for these works. Especially when these works were confirmed in the Respondent's text the day after the parties' met on 30 June 2024 and importantly before the payment was made.
16. On the balance of probabilities, we prefer the oral evidence of Mr Richards to that of Dr Prescott's which we consider to be supported by the payment and the text exchanges. We are satisfied that the payment was requested and paid to address damages at the Property, which the Respondent considered the Applicant to be liable for. We therefore find that the payment falls under the permitted payments allowed by paragraph 5 of Schedule 1, the payment being for damages in line with Mr Richard's oral evidence. Accordingly, the Applicant's application is refused.

Niall Walsh
Regional Surveyor

19 June 2024