



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00BN/HTC/2023/0006

Property : 2 Potato Wharf, Manchester, M3 4NB

Applicants : Ms Ameka Rachel Udeh

Respondent : Ms Rachell Wai Kwan

Type of Application : Tenant Fees Act 2019, Section 15

Tribunal Members : (Judge) Mr Phillip Barber
(Tribunal Member) Mr N Swain

Date : 17 July 2024

DECISION AND REASONS

Decision

The application for the return of the holding deposit in the sum of £311.54 in relation to a property at Potato Wharf, M3 4NB is dismissed.

Reasons

1. The Applicant is the former prospective tenant of the above property, and the Respondent is her former prospective landlord.

Sequence of events

2. The Applicant's sister, Sammy Dabiri, opened an account with Open Rent, and negotiated with the prospective landlord (Ms Rachell Wai Kwan) to arrange a virtual viewing of the property. The Applicant's sister also paid the holding deposit of £311.54 through her Open Rent account. At some point, the Applicant herself also opened an account with Open Rent and subsequently, supplied all of the necessary referencing documents via that account. Attempting to rent the property via two different accounts caused a problem with the Open Rent letting system, and, as we understand things, the organisation was unable to link the two and transfer the holding deposit paid via Ms Dabiri's account over to the Applicant's account within a timely manner. The Applicant could not, therefore proceed with the application as her sister had already entered into negotiations and paid the holding deposit.
3. The Applicant entered into email correspondence with the Respondent about cancelling the application and the Respondent indicated that it was the Applicant's sister that had to cancel the application at her end and that once it was cancelled the property would be readvertised and the Applicant could then proceed to pay the holding deposit. As this was not possible using the Open Rent system, the Applicant asked the Respondent to cancel the application so that Open Rent would return the money to her sister. Understandably the Respondent was reluctant to do this.
4. In her response to the Application, the Respondent submitted (in correspondence) that she used Open Rent as it is relatively hassle-free system, popular amongst both landlords and tenants. She also submitted that in her view the Applicant is entirely to blame for the loss of her deposit as she used the wrong procedure in applying for the tenancy. As a result, no tenancy was entered into within the stipulated time, and she (the Respondent) has ended up losing three weeks' rent. Subsequently, and as soon as she was able to, the Respondent relet the property.
5. The Applicant effectively submits that she told the Respondent what the difficulties were, and the Respondent could simply have declined the let so that her deposit could be returned. Thereafter she would have

paid the holding deposit via her account and continued to enter into a tenancy.

6. Prior to finalising a decision on this application, we had to clarify the proper amount of rent as the Applicant had stated a monthly rent of £1250. In response to directions, the Respondent clarified that the monthly rent was £1350 and in the absence of any dispute as to the amount from the Applicant, we accept that amount as correct.

The Relevant Legislative Provisions

7. The legislation relevant to determining this application is contained in the Tenant Fees Act 2019. A landlord is entitled to charge a maximum of the equivalent of one weeks' rent for the purpose of what is termed a "holding deposit" and thereafter, subject to an alternative arrangement in writing, the parties have 15 days from the payment of the holding deposit to enter into a tenancy agreement.
8. By paragraph 3(b) of Schedule 2 to that Act, the landlord is obliged to return the holding deposit to the tenant, if the landlord and tenant fail to enter into a tenancy agreement within 15 days of payment. However, the landlord is not obliged to return the holding deposit under paragraph 3(b) if (paragraph 11 of Schedule 2):
 - (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and
 - (b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but
 - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
9. The question is therefore whether the Applicant or the Respondent in this application has failed to take all reasonable steps. It must be one or the other there is no possibility of apportionment.
10. We have decided that it is the Applicant who has failed to take all reasonable steps. It seems to us that it is *ab initio* the Applicant's fault that this tenancy agreement could not complete using the Open Rent system and within the legislative timescale. It was her sister who paid the holding deposit via her sister's account, that was obviously a mistake and probably an innocent one, but it would be unfair to effectively punish the landlord for that mistake by directing the return of the holding deposit. We have found that the Respondent was not instrumental in orchestrating this error, she accepted the referral and left the property available for the Applicant to complete and, we think,

did all she was reasonably obliged to do in following the procedure to enter into a contract.

11. We accept that the Applicant was unable to resolve the issue with Open Rent within an appropriate timescale but again this is not by reason of any fault on the part of the Respondent. In any event, it seems to us, that the Applicant could quite reasonably have allowed her sister to enter into the agreement on the understanding that she was doing so as agent for the Applicant or that it would subsequently be transferred to her name. These were steps entirely within the boundary of reasonableness and would have been relatively risk free.
12. In those circumstances we accordingly find that paragraph 11 is made out and the Respondent is not obliged to return the holding deposit.

Phillip Barber, Tribunal Judge

Residential Property Tribunal