



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

Case reference : **LON/ooAW/HTC/2025/0609**

Property : **Flat 34, 1 Hans Crescent, London SW1X 0LG**

Applicant : **Oleksndr Pidboretskyi.**

Representative : **I/P**

Respondent : **AXON Partners Attorneys Association
Ref: Andrii Raietskyi.**

Representative : **James Vaughan Properties Limited**

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

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **8 October 2025**

DECISION

Decisions of the tribunal

- (1) The tribunal declines to make an order for the return of the holding deposit of £7,500 as it has no jurisdiction to do so in respect of this Common Law Agreement.
- (2) The tribunal declines to make an order for the return of the £50 'test run' payment as it has no jurisdiction to do so.

The application

1. This is an application for an order for the recovery of a holding deposit paid in respect of a tenancy of **Flat 34, 1 Hans Crescent, London SW1X 0LG** pursuant to section 15 of the Tenant Fees Act 2019. The claim seeks the return of a holding deposit of £7,500 including a sum equivalent to 1 weeks rent of £3,750 and £50 in relation to a 'test rent payment'.

The background

2. The application form and supporting documents appear to confirm that in October 2024 the respondent received payment of £7,500.00 from or on behalf of the applicant, but that, despite requests, the respondent has not repaid this sum despite the applicant not being permitted to take up occupation due to difficulties with transfer of the initial rent equivalent to 6 months' rent i.e. £97,000. In addition in October 2024 the applicant paid £50.00 to the respondents as a test payment for their payment system, the applicant seeks the recovery of this sum. A total of £7,550.00 is therefore sought by the applicant.

The hearing

3. Neither party requested a hearing and the application was determined on the papers provided although neither party provided an indexed, paginated bundle as directed in the tribunal's Directions dated 1 August 2025.

The applicant's case

4. In the application form the applicant stated:

In October 2024, Mr Pidboretskyi (the "Applicant") negotiated a conclusion of the Agreement for a Common Law Tenancy (the "Agreement") of Flat 34, 1 Hans Crescent, Knightsbridge SW1X 0LG, with the representative of James Vaughan Properties

Limited (the "Company"), Mr James Vaughan. The Agreement provided that the one week's rent shall be £3,750.

On 3 October 2024, Applicant received an Initial Payment Request from the Company, and, on the same day, Applicant paid an amount of £7,500 to the Company's bank account as the Deposit (the "Holding Deposit"), an amount equivalent to two weeks' rent, despite the permitted maximum was one week's rent (£3,750).

Applicant received the Agreement only on 10 October 2024 and initialized it on the same day. The Landlord never signed the Agreement, nor did Applicant receive any letters from him once, so we consider that the contractual relations of Common Law Tenancy have never arisen between Applicant and the Landlord. Hence, Tenant Fees Act 2019 applies, and the amount of £3,750 constitutes a prohibited payment according to Sch. 1 para. 3(3) of the said Act.

Before coming to the UK, Applicant was a resident of Ukraine. Still, the majority of his assets remained in Ukraine, namely in bank accounts that are established in Ukrainian banks. On 24 February 2022, a National Bank of Ukraine Board Resolution No. 18 was adopted, and para. 14 of the said Resolution has put a restriction on SWIFT transactions from Ukrainian bank accounts. These transactions are only allowed in specific circumstances which do not include rental payments. Due to these restrictions, it was only possible for Applicant to pay the full amount he had to pay under the Agreement via the payment link. Mr Pidboretskyi's previous letting agent promptly provided him with a payment link, so he had a reasonable expectation that Company would be able to accommodate his needs, as well, since it's usual practice for a money transfer.

Immediately after initializing the Agreement, on 10/10/2024, the Applicant asked the Company to provide him with an alternative payment method because it was impossible to transfer funds via wire transfer for the above reasons. Mr Vaughan initially responded that he had no credit card facility, but Applicant suggested using Virgin Money as a provider of payment link. Then, on 11 October, Mr Vaughan reported his bank could provide the payment facility. On 13 October, Mr Vaughan promised to set up the facility "in a few days". Only on 24 October Mr Vaughan provided Applicant with a payment link set up in "Stripe," but also asked Applicant to pay only £50 in order to test the link. Applicant made such payment and these funds were withdrawn from his bank account, but Mr Vaughan claimed he needed another week or more to verify the transfer's success. It was extremely unfeasible for Applicant to wait for such a long time as he had to pay £500 per day for temporary accommodation until the Agreement is concluded. Furthermore, the deadline for the Agreement was on 25 October (by virtue of Sch. 2 para. 2 of Tenant Fees Act 2019), so such actions on the

side of the Company could only be construed as withdrawal from the process of entering into the Agreement.

On 24 October 2024, the last day before the deadline, the Applicant made a final suggestion to proceed with cryptocurrency, but the Company left this suggestion unanswered.

Starting on 24 November 2024, the Applicant's representatives conducted a communication with the Company on recovering the Holding deposit. This communication lasted for several months and eventually came to nothing. The Company claimed that it was the Applicant who withdrew from the process, ignoring the fact that he did everything that was within his power to enter into the Agreement, and it was not eventually concluded only the Company could not set up a payment link within a reasonable deadline that is also set by the Tenant Fees Act 2019. The Company has also claimed that the process was at a financial cost, but it has never provided the Applicant with any proof of expenses that were incurred by the Applicant's behavior.

...

5. The applicant provided an unsigned copy of the Common Law Tenancy Agreement and evidence of the sums paid. The Tenancy Agreement commencing on 12 October 2025 and was headed Common Law Tenancy Agreement and made between the respondent (landlord) and the applicant (tenant) with the tenant's wife/partner and their two children names as permitted occupiers. The weekly rent payable was stated as £3,750 payable six monthly in advance equating to £195,000 per annum. A deposit of £22,500 was required from the applicant. By clause 8.1. of the tenancy agreement, the rent was to be paid by bank transfer to James Vaughan Properties Ltd.

The respondent's case

6. In correspondence the respondent asserted:

This is a Common Law Agreement, not an AST, so it is my understanding that the Holding Deposit is not limited to one weeks' rent.

The attachment also includes the Tenancy Agreement signed by Mr Pidboretskyi. AML was completed on both parties successfully via FCS Compliance.

The Holding Deposit was paid by bank transfer.

My Client (the Landlord) signed the Agreement and sent it to me on 11th October 2024.

The Tenancy Agreement clearly states that the payment of rent should be via bank transfer. Mr Pidboretskyi advised just before start date that he would want to pay via a card payment – I immediately advised that I did not have that facility, however I

was prepared to set the facility up for him. I kept him up to speed constantly with progress. I finally managed to get this set up on 24th October 2024 and it was agreed we should carry out a 'test run' with £50 before transferring such a large sum of £97,500 plus the remainder of the deposit. Mr Pidboretskyi paid the £50 immediately and I confirmed receipt. The full payment could then have been paid, however Mr Pidboretskyi decided to withdraw from the process..... 17 days after the term was due to start.

The tribunal's reasons

7. This is a high value tenancy made between two individuals for a rent of £195,000 per annum. Consequently, the tribunal finds it can properly be regarded as a Common Law Tenancy Agreement and not an assured shorthold tenancy (AST) under the provisions of the Housing Act 1988 (as amended).
8. The Tenant Fees Act 2019 does not have a specific section exempting common law tenancies. However, in common law tenancies it is the contractual terms that apply and not the protections provided by other statutory provisions.
9. Consequently, the tribunal determines the protections provided by the Tenant Fees Act 2019 do not apply to this contractual agreement.
10. However, were the provisions of the Tenant Fees Act 2019 to apply, Schedule 2 of the 2019 Act states:

2(1)In this Schedule "the deadline for agreement" means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.

(2)But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule.

3Subject as follows, the person who received the holding deposit must repay it if—

(a)the landlord and the tenant enter into a tenancy agreement relating to the housing,

(b)the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing, or

(c)the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.

4If paragraph 3 applies, the deposit must be repaid within the period of 7 days beginning with—

(a)where paragraph 3(a) applies, the date of the tenancy agreement,

(b)where paragraph 3(b) applies, the date on which the landlord decides not to enter into the tenancy agreement, or

(c)where paragraph 3(c) applies, the deadline for agreement.

11. The tribunal finds the landlord and the tenant entered into a tenancy agreement dated 11 October 2025 ie. within 15 days of the holding deposit of £7,500 being paid on or about 3 October 2025. Subsequently, the applicant was not permitted to take up occupation due to difficulties with payment of rent by way of bank transfer. Consequently, the tribunal finds that, an agreement having been entered into, the holding deposit should have been repaid at the start of the tenancy i.e. 12 October 2025. This has not been done. The respondent accepts the £50 trial sum paid should be returned which the tribunal finds in any event, would be a prohibited payment pursuant to s.3 of the Tenant Fees Act 2019, not being a permitted payment under Schedule 1 of the Act.
12. In conclusion, the tribunal finds the provisions of the Tenant Fees Act 2019 do not apply to this contractual Common Law Tenancy Agreement and dismisses the application.

Name: Judge Tagliavini

Date: 8 October 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).