



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

Case Reference	: MAN/ooFN/HTC/2025/0001
Property	: 5 Farington Court, Farington, Leyland, Lancashire PR25 4QX
Applicant	: Liam Matthew Hill
Respondents	: Countrywide Residential Lettings Limited
Representative	: Group Legal Services
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 J Jacobs MRICS
Date of paper determination	: 18 August 2025
Date of Decision	: 18 August 2025

DECISION

Decision

Under the provisions of section 15 of the Tenant Fees Act 2019, the Tribunal orders that the Respondent repay the Applicant the holding deposit of £253 within 14 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.

No order as to costs is made.

Reasons for decision

Introduction

1. By application dated 10 February 2025, the Applicant has applied under section 15 of the Tenant Fees Act 2019 ('the 2019 Act'), for the recovery of £253 from the Respondent as a prohibited payment or holding deposit.
2. The Tribunal gave Directions on 11 June 2025 regarding case management matters. They provided for the matter to be determined on the papers unless either party made a request for a hearing. No request was made, and the Tribunal did not consider a hearing was necessary to determine the issue fairly and justly, particularly in view of the amount at issue.

Preliminary matter

3. The Respondent's legal representative advised that the incorrect legal entity has been named as the Respondent. The application to the Tribunal refers to Countrynorth, whereas the correct legal entity is Countrywide Residential Lettings Limited. We have therefore corrected the name of the Respondent.

Background

4. The Respondent letting agency was instructed by the landlord to source a tenant for the Property. The Applicant applied to the Respondent as a prospective tenant of the Property.
5. On 15 January 2025, a lettings negotiator on behalf of the Respondent contacted the Applicant via email to seek further information from the Applicant. This included whether he had 'any bad credit?'
6. On 16 January 2025, the Applicant responded via email and provided the information requested, including that the letting was to be for 2 people and that he had '*poor credit history but debts paid off and guarantor available if required*'.
7. On 17 January 2025, the negotiator responded and asked '*is the bad credit CCJ's or IVA? If so, what are the totals roughly?*'
8. On the same date, the Applicant responded advising '*The bad credit is just a few defaults which are now settled. I can confirm I don't have any CCJ's or IVA, apologies I wasn't sure that's what you meant by bad credit*'.

9. A phone call on an undisclosed date took place between the Applicant and the Respondent's negotiator at which the Applicant says that he disclosed multiple historical defaults and one still active default.
10. On 4 February 2025, the Applicant and the second prospective tenant completed an online form entitled 'Application to Rent for an Assured Shorthold Tenancy December 2022 ('the Application Form'). On the same date, the Applicant paid a holding deposit of £253 to the Respondent, the receipt of which was acknowledged by the Respondent by email of the same date.
11. On 5 February 2025, the negotiator emailed the Applicant to advise that '*you have both failed credit checks and the landlord is not able to proceed with the application on that basis. If you want to call me for more information, please let me know however it won't pass even with a guarantor.*'

Submissions

Applicant

12. The Applicant provided a written submission with exhibits and a supplementary reply to the Respondents written submission. The Applicant submits that he clearly informed the Respondent of his poor credit before the referencing process began, both verbally and in writing and there was no misrepresentation on his part. The Respondent therefore knew the material facts before taking the holding deposit and chose to proceed with his application regardless. The holding deposit has been withheld despite his transparency.
13. A clause in the Application to Rent Form which allows the withholding of the deposit does not apply as there was no false or misleading information. He submits that any contractual term allowing retention despite full disclosure would be inconsistent with the 2019 Act and unenforceable.
14. He says that he experienced unprofessional conduct from a person believed to be the branch manager who responded with an accusatory and passive aggressive remark over the phone, stating "Well you weren't completely honest about your credit history were you?", which he found to be distressing and defamatory. He attempted to obtain a recording of the phone call with the negotiator as was previously told all calls were recorded. The negotiator advised him that no recording exists, which raised further concerns.
15. The Applicant says that withholding the deposit has caused severe financial hardship, as the money represented crucial funds necessary to secure alternative accommodation. The delay disrupted his housing plans and had a direct negative effect on his wellbeing.

Respondent

16. The Respondent's legal representative submits that the Applicant provided false and misleading information, and the Respondent was therefore entitled to retain the holding deposit in accordance with the terms in the Application Form which are in accordance with the 2019 Act.

17. The legal representative submits that the information provided in the application to the Tribunal, namely '*I informed the letting agent that I have a poor credit history, with at least 5 defaults all of which were paid off apart from 1*' is false. Further, the information indicated in the Application to Rent form also turned out to be false.
18. The Respondent instructed HomeLet, a third- party referencing company, to undertake routine financial referencing checks of which the Applicant failed and as a result, the holding deposit was retained by the Respondent, as contractually agreed in accordance with the Application to Rent Form.
19. The Respondent considers that in the circumstances, contractually and pursuant to the 2019 Act, that the Tribunal should find that they are entitled to retain the Applicant's holding deposit on the basis that they were provided with false and misleading information.

The Law

20. Schedule 2 of the 2019 Act deals with the treatment of holding deposits.

21. Paragraph 3 provides:

'Subject 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 failed to enter into a tenancy agreement relating to the housing before the deadline for agreement.'*

22. The 'deadline for agreement' is defined in paragraph 2 as the 15th day of the period beginning the day on which the landlord or letting agent receives the holding deposit unless there is a written agreement between the parties that provides a different day.

23. Paragraph 4 provides:

'If paragraph 3 applies, the deposit must be repaid within the period of seven 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.'*

24. Paragraph 5 provides:

- (1) *'The person who received the holding deposit must repay it if –*

(a) that person believes that any of paragraphs 8 to 12 applies in relation to the deposit, but

(b) that person does not give the person who paid the deposit a notice in writing within the relevant period explaining why the person who received it intends not to repay it.

(2) In subparagraph (1) "the relevant period" means -

(a) where the landlord decides not to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the date on which the landlord decides not to do so;

(b) where the landlord and tenant failed to enter into a tenancy agreement before the deadline for agreement, the period of seven days beginning with the deadline for agreement.'

25. Paragraphs 6 to 12 set out exceptions as a result of which paragraphs 3(a) to (c) do not apply. Only paragraph 9 is relevant to this matter.

26. Paragraph 9 provides:

'Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and -

(a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or

(b) the landlord is reasonably entitled to take the tenants action in providing false or misleading information into account in deciding whether to grant such a tenancy'.

27. The Government has issued 'Tenant Fees Act 2019: Statutory Guidance for landlords and letting agents (updated September 2020)'. Similar guidance is provided for enforcement authorities and tenants. The Guidance is not authoritative as to the proper interpretation of the Act but is indicative of the policy of the Act. And we have therefore had regard to it.

The Application to Rent for an Assured Shorthold Tenancy December 2022 Form

28. The Form contains the following provisions-

'Holding Deposit – 1 Week's Rent

We require this payment of intent as confirmation of your intention to proceed with the proposed tenancy. This must be paid now, and if your tenancy proceeds it will be put towards your first rental payment. The holding deposit will not be refunded to you (or any other proposed joint tenant) - If you:

1. Decide not to proceed with the tenancy.
2. Fail the Right to Rent checks (and we could not have reasonably expected that you or any other adult occupier was disqualified from renting because of immigration status).
3. Fail to take all reasonable steps to enter into the tenancy (and we and the landlord have taken all reasonable steps to enter into a tenancy agreement with you).
4. Provide false or misleading information regarding your ability to meet the referencing criteria outlined below.

Payment of the holding deposit does not constitute the granting of a tenancy or a promise to enter into a tenancy on the part of us or the landlord.

This payment will be refunded to you within 7 days if the landlord decides not to offer you a tenancy for any reason other than those listed 1-4 above. If a tenancy has not been entered into by the “deadline for agreement” the holding deposit will be returned to you unless one of the exceptions at 1-4 above applies, or we agree an extension with you. You agree that the deadline for agreement shall be either 15 days beginning from the day when you paid the deposit to us, or until the proposed start date of the tenancy as confirmed below in the Application to Rent, whichever is the later. Any extension will be agreed with you in writing. Where we return the holding deposit, you agree that we may return the holding deposit to you, any other person who paid the holding deposit to us, or any other individual who you applied to rent a property with as joint tenants. No interest will be paid on this holding deposit to which you are or may be entitled. In signing this Application to Rent you agree to the holding deposit being held on this basis.’

29. On page 3 of 9, the Application Form under the heading References and Right to Rent, it says:

‘Your references will usually be completed by a referencing agency on behalf of your landlord. We may need to share the information you provide with organisations outside of our organisation. We will share the results of any referencing application and Right to Rent Checks with your proposed landlord and/or their representative(s).

In order to pass the referencing process and demonstrate your suitability as a tenant you will be required to meet the following criteria.’

30. The criteria includes:

‘County Court Judgments (CCJs), Bankruptcy & Insolvency – CCJs, Orders and Arrangements must be disclosed in writing before you sign this form and pay a holding deposit. We can then establish what impact this may have on the outcome of the referencing process’.

31. The section concludes with:

‘IMPORTANT NOTE
YOUR SIGNING OF THIS FORM CONFIRMS THAT YOU MEET THE MINIMUM CRITERIA OUTLINED ABOVE. IF IT LATER TRANSPiRES THAT THIS CONFIRMATION WAS EITHER FALSE OR MISLEADING THEN THE

HOLDING DEPOSIT WILL NOT BE REFUNDED TO YOU. IF YOU ARE IN ANY DOUBT AS TO YOUR ABILITY TO FULFILL THIS CRITERIA YOU SHOULD NOT SIGN THIS FORM OR PAY A HOLDING DEPOSIT (sic).

Deliberations

32. In accordance with paragraph 2 of Schedule 2, the 'deadline for agreement' is 19 February 2025. As the landlord, via the letting agent, has decided before 19 February 2025 not to enter into a tenancy agreement relating to the Property, then we consider that paragraph 3(b) of Schedule 2 is the relevant paragraph.
33. In accordance with paragraph 4, subject to any exceptions, the holding deposit should have been repaid within 7 days of 5 February 2025, which was when the landlord decided not to enter the tenancy agreement.
34. We then considered whether any exceptions under paragraphs 6 to 12 applied and determined that only paragraph 9 was relevant. The Respondent's legal representative refers to false and misleading information contained within the Tribunal application itself. As this occurred after the landlord's decision not to proceed with the tenancy, it cannot have formed part of his decision-making process, and therefore is not relevant.
35. We accept that the Application Form explicitly states that the holding deposit will not be refunded if the person provides false or misleading information regarding their ability to meet the referencing criteria set out in the Form.
36. However, the Respondent's legal representative has not made clear exactly what the false and misleading information was, other than by reference to a third- party referencing company and the failure to pass the referencing checks. We have not been provided with a copy of the third -party report. On the basis of the documentary evidence provided to us, we therefore cannot determine whether or not the Applicant provided false or misleading information compared to the third- party report. Did he have County Court judgements or an IVA when he said he had not? Did the reference check disclose matters not related to County Court judgements or IVA's that the Applicant had not disclosed? The documentary evidence provided does not say explicitly what the alleged false and misleading information was, which is a significant omission.
37. Further, we find that by his email correspondence of 16 and 17 January 2025, the Applicant did provide information regarding his financial situation and '*poor credit history*' in response to direct questions from the letting agent, as required by the Application Form. In the absence of any evidence to the contrary, we accept the Applicant's evidence that he also had a phone call with the Respondent's negotiator regarding the issue. We have seen no evidence that the Respondent's negotiator required any further information from the Applicant, or advised him that the Application Form required financial information to be set out in writing or indicated that there could be problems based on his '*poor credit history*' before he was asked to sign the Application Form and pay the holding deposit. In the absence of any further direction from the Respondent's negotiator who was on notice as to the poor credit

history, we are unclear what the Applicant was expected to do over and above what he had already provided.

38. We have had regard to pages 33 to 44 of the Statutory Guidance for landlords and letting agents which relates to holding deposits. Page 33 refers to being '*clear and up front with tenants about your expectations and check that they meet the basic income and credit worthiness requirements before taking a holding deposit from them*'. '*You should clearly define what you consider to be credit worthiness-tenants should have a clear understanding of what might count against them so that they have the opportunity to provide any relevant information. If this includes previous missed and late payments, you should make this clear to the tenant.*'

39. Based on the evidence before us, we therefore do not find that the Applicant gave false or misleading information and the exception in paragraph 9 does not apply. Therefore, the holding deposit of £253 should have been refunded within 7 days of the landlord's decision not to proceed with the tenancy agreement as required under paragraph 3 of the 2019 Act.

40. If we are wrong on that point, we have also considered the provisions of paragraph 5 of Schedule 2. The landlord has purportedly decided not to proceed with a tenancy agreement on the basis of paragraph 9, namely alleged false and misleading statements. As such, paragraph 5 requires the Respondent, as the recipient of the holding deposit, to give the Applicant, within 7 days of the landlord making the decision not to proceed with a tenancy agreement, written notice of why they intended not to repay the holding deposit. We note that whilst the Application Form appears to replicate the provisions of Schedule 2 of the 2019 Act under the heading 'Holding Deposit-1 week's rent', it makes no reference to the provisions of paragraph 5.

41. Pages 35 and 37 of the Statutory Guidance refer to the requirements of paragraph 5 and the need to explain why the letting agent has retained the deposit. Pages 38 and 39 provide cases studies with examples of where a tenant is alleged to have given false and misleading information and states that '*You must always provide the tenant with reasons in writing to explain why you are retaining their holding deposit and what the false and misleading information that they have provided is*'. Page 39 sets out what a letting agent should do if it considers that the tenant has unknowingly given false or misleading information stating, '*we encourage you to give the tenant the chance to rectify the mistake or to only retain the costs of undertaking the reference check rather than the full amount of the holding deposit.*'

42. Page 35 says that '*Even when you are entitled to retain a tenant's holding deposit, you should consider whether it is necessary to do so. We encourage landlords and letting agents to decide on a case by case basis, whether to retain part of the deposit and understand that they may only need to cover specific costs which have been incurred (for example referencing checks). You should be able to provide evidence of your costs to demonstrate that they are reasonable.*'

43. We have not been provided with documentary evidence by either party that written notice as required by paragraph 5 was sent.

44. We considered whether to issue Further Directions to allow any such documentation to be provided. The Respondent's legal representative has a professional obligation to consider the matter in the round when responding to a Tribunal application seeking recovery of a holding deposit, which should include consideration of all aspects regarding its recovery. It is their professional responsibility to provide the Tribunal with such evidence as is available to demonstrate that the Respondent has carried out the requirements of Schedule 2 in relation to holding deposits. A written notice as required may exist but we have not been provided with a copy.

45. We were mindful of the overriding objective set out in Rule 3 of the Tribunal Procedure (First -Tier Tribunal) (Property Chamber) Rules 2013 to deal with cases fairly and justly. This includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and of the Tribunal and also by avoiding delay, so far as compatible with proper consideration of the issues. In our view, the matter is a simple one relating to £253 and we considered it disproportionate to seek further information or delay matters further, particularly as the Respondent is legally represented.

Decision

46. We find that, under the provisions of paragraph 5 of Schedule 2 of the 2019 Act, the Respondent must repay to the Applicant the deposit of £253.

47. Under the provisions of section 15 of the Tenant Fees Act 2019, the Tribunal orders that the Respondent repay the Applicant the holding deposit of £253 within 14 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.

Costs

48. Neither party made an application for costs, and we make no such order.

Appeal

49. 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.

.....

Judge T N Jackson