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

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| **Case reference** | **:** | **CAM/33UF/HTC/2025/0001** |
| **Property** | **:** | **35 Briston Road<br>Melton Constable<br>Norfolk NR24 2DG** |
| **Applicant** | **:** | **David Baird-Parker** |
| **Respondent** | **:** | **Minors & Brady Limited** |
| **Type of application** | **:** | **For recovery of all or part of a holding deposit** |
| **Tribunal** | **:** | **Judge David Wyatt** |
| **Date** | **:** | **16 May 2025** |

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**DECISION**

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## Decision

I make no order on this application.

## Reasons

1. This application was made by David Baird-Parker under section 15(3) of the Tenant Fees Act 2019 (the "**Act**") for the return of a holding deposit of £230.00 paid to the Respondent letting agents on 26 June 2024.

2. The tribunal gave directions on 18 March 2025 providing for the parties to exchange case documents and the matter to be determined on the papers unless either party made a request for a hearing by 16 April 2025 or the tribunal, having reviewed the papers, considered that a hearing was required. No such request was made, and I consider that a hearing is not necessary to determine this case fairly and justly.

## The law

3. Section 3 of the Act defines a "*holding deposit*" as money paid by or on behalf of a tenant to a landlord or letting agent before the grant of a

tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 to the Act. Subject to the conditions set out in section 3 and to the extent it does not exceed one week's rent, such a holding deposit is a permitted payment (so is not prohibited entirely by section 1 or 2 of the Act).

4. Schedule 2 applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England. It defines the "*deadline for agreement*" as: "*the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit*" or the day "*agreed with the tenant in writing*" as the deadline for agreement for the purposes of Schedule 2.

5. By paragraph 3(c) of Schedule 2, subject to following provisions of Schedule 2, the person who received the holding deposit must repay it if (amongst other things) the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement. This repayment obligation does not apply:

   a. under paragraph 9, if the tenant provides false or misleading information to the landlord or letting agent and one of the conditions set out in 9(a) or (b) applies;

   b. under paragraph 10, subject to paragraph 13 (described later in this decision), **if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement**; or

   c. under paragraph 12, subject to paragraph 13, if: (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement; and (b) the landlord takes all reasonable steps 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.

6. Further, by paragraph 5 of Schedule 2, the person who received the holding deposit must repay it if: (a) they believe that any of paragraphs 8 to 12 applies in relation to the deposit, but (b) they do not give the person who paid the deposit notice in writing within the relevant period explaining why the person who received it intends not to pay it. Here, the "*relevant period*" means the period of seven days beginning with the deadline for agreement.

7. By section 15(2) of the Act, where a landlord or letting agent breaches Schedule 2 to the Act in relation to a holding deposit paid by a relevant person and all or part of the holding deposit has not been repaid to the relevant person, subsection (3) applies. By subsection (3), the relevant person may apply to the tribunal for recovery from the landlord or letting agent of the amount of the holding deposit (or, if this has been partially repaid, the remaining part of the holding deposit). By subsection (9), on such an application, the tribunal "*may*" order the landlord or letting agent to pay to the relevant person "*...all or any part...*" of the amount

referred to in subsection (3) within the period (of at least seven days but not more than 14 days) specified in the order.

## The Applicant's case

8. The Applicant states in their application form that they were asked to pay a holding deposit of £230 and were informed that this would be a non-refundable holding deposit. They argue that was a breach of the Act, since all holding deposits must be refundable.

9. The Applicant states that they withdrew their application for the Property because of "*difficulties*" they experienced with the "*lettingsforlandlords*" platform used by the Respondent. They say they were asked multiple times for the same information/documents when these were lost after being uploaded to the system. They say their withdrawal was due to the platform being unfit for purpose.

10. The Applicant sent an email to the Respondent on 7 August 2024 reiterating that the holding deposit is refundable and requesting the £230 they paid, including a link to the guidance for landlords and agents about the Act.

## The Respondent's case

11. The Respondent agrees that the Applicant made payment of the holding deposit of £230 on 26 June 2024. They say that the proposed rent for the property was £1,000 per calendar month, so the holding deposit paid by the Applicant is less than the maximum permitted amount of £230.76.

12. They state that on 1 July 2024 the Applicant wrote to withdraw from the application process "*…as they were finding the process stressful and their guarantor also wished to withdraw…*". They provided copies of the relevant correspondence, saying this showed they had tried to offer advice to the Applicant in order for them to continue with the process but they confirmed their withdrawal.

13. On 2 July 2024 the Respondent wrote to the Applicant to confirm that the holding deposit was non-refundable, as the Applicant had withdrawn their application. They pointed out that this notification was given only six days after the holding deposit was paid. In response to the email of 7 August 2024 from the Applicant, the Respondent provided an extract from the relevant guidance in relation to the circumstances in which a holding deposit may be retained. They said that they did not receive any further communication from the Applicant.

## Reply

14. In reply, the Applicant did not dispute any of this but again complained about the initial description of the holding deposit as non-refundable. The Respondent answered that they do refund holding deposits in line with the Act (giving landlord withdrawal as an example).

## Application of the Act

15. I am not satisfied that the description of the holding deposit as "*non-refundable*" was itself a breach of the Act. Perhaps it should have been clearer. However, the Applicant has not pointed to anything in the Act which this description breached. There is nothing to suggest this description (by itself) breached, or there was any breach, of section 1 or 2 of the Act. Accordingly, the tribunal could make an order under section 15 of the Act (for recovery of payments) only if the Respondent breached Schedule 2 to the Act in relation to the holding deposit. As to that:

16. It is not disputed (and appears) that, after the Applicant withdrew, the Respondent gave notice within the relevant period explaining why they intended not to repay the holding deposit. Accordingly, the obligation to repay automatically where such notice is not given (as summarised in paragraph [6] above) does not apply.

17. Nonetheless, as summarised in paragraph [5] above, the holding deposit must be repaid unless one of the relevant exceptions applies, because the landlord and the tenant failed to enter into a tenancy agreement before the deadline for agreement.

18. It is not disputed (and appears) that the Applicant notified the Respondent letting agent before the deadline for agreement that they had decided not to enter into the agreement. Accordingly, the exception under paragraph 10 of Schedule 2 applies (so the deposit is not repayable) unless the exception to the exception, paragraph 13, applies.

19. Paragraph 13 of Schedule 2 would stop the exception in paragraph 10 applying (so the deposit would be repayable) if before the deadline for agreement:

    "*(a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or*

    *(b) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.*"

20. I am not satisfied that either of these are made out. As to (a), there is no suggestion that any requirements were imposed which would breach sections 1 or 2 of the Act. These involve only specific prohibited matters. Even if problems with an application/reference platform could fall within the scope of (b), for the reasons explained below I am not satisfied that the matters alleged by the Applicant about the platform used by the Respondent are sufficient to amount to behaviour making it unreasonable to expect the Applicant to enter into the tenancy agreement.

21. The problems described by the Applicant were not specifically mentioned in their withdrawal e-mail of 1 July 2024, which reads: "...*The whole process has been quite drawn out and stressful and David's dad has decided he cannot be our guarantor due to the additional stress this has put on him from the referencing agency*...".

22. Samuel Carpenter of the Respondent replied on 2 July 2024 saying:

"*It's a shame to hear that you have found the process hard so far and that one of your guarantor's are not willing to provide the necessary information to complete the checks.*

*I can see that Liam's referencing has completed; he is acceptable as a guarantor on the basis that there is a 2nd guarantor to make up the rest of the required income to meet the affordability checks.*

*Would you have someone else who would be willing to guarantor instead or Richard.*

*Failing that, once Richard supplies his pension information so that Legal for Landlords can assess the income, granted it matches the information we had received, it would pass, and we would be able to easily proceed with the tenancy and getting the agreement signed and monies paid.*

*Unfortunately, the Holding Deposit you paid is nonrefundable and will not be returned if you are looking to not proceed. The holding deposit was paid for you to secure the property, taking it off the market for you to be able to go through the process and move in.*"

23. Later that day, Mr Carpenter wrote again, confirming a discussion when the Applicant had advised that they did still wish to withdraw their application. He warned again that the deposit would not be refunded. None of the facts described in his correspondence appear to have been disputed.

24. It seems to me that the problems now described by the Applicant, of having to provide the same information/documents "multiple times", have less weight when they were not specifically mentioned in the contemporaneous correspondence noted above but the other factor(s) noted above were. It appears the Applicant was offered help and suggestions as to how they might proceed, and warned the deposit would not be refunded if they withdrew as they had proposed, but confirmed they wished to withdraw.

25. Even if that is wrong, the Applicant seems to have engaged with the platform and what was being sought from them (and/or their guarantors) only for a few days after payment of the holding deposit, deciding five days later to withdraw. In the circumstances, I am not satisfied that there was behaviour making it unreasonable to expect them to enter into the tenancy agreement for the purposes of paragraph 13.

26. Accordingly, I am not satisfied that the Respondent has breached Schedule 2 to the Act, so I cannot order repayment of all or any part of the holding deposit.

**Judge David Wyatt** **16 May 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).