



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

Case reference : LON/00BK/HTC/2026/0008

Property : Flat 2, 75 Carlton Hill, London NW8 0EN

Applicant : Gavin Werth
(unrepresented)

Respondents : DEXTERS LONDON LIMITED

Respondent's Representative : Mr Adem Esen, inhouse solicitor

Type of application : Application for recovery of an alleged prohibited payment under the Tenant Fees Act 2019

Tribunal : Judge Timothy Cowen
Mr S Mason FRICS

Date of hearing : 1 July 2026

Date of decision : 29 September 2026

SUBSTANTIVE DECISION

Decision of the tribunal

The application is refused.

REASONS FOR DECISION

1. This is an application by the Applicant freeholder under section 15 of the Tenant Fees Act 2019 for recovery of an alleged prohibited payment.
2. The hearing took place before us by remote link on 1 July 2026. Mr Werth, the Applicant, represented himself. The Respondent, Dexters, was represented by its in-house solicitor, Mr Adem Esen. Mr Esen called Ms

Naomi Murdoch, a director of the Respondent, to give evidence. She was cross examined by the Applicant.

3. It is common ground that the Applicant was a tenant of Flat 2, 75 Carlton Hill ("the Flat") under a tenancy granted by Dr Seyed Reza Manafi ("the Landlord"). It is also common ground that the Landlord employed the Respondent as its letting agent. The Applicant dealt at all times with the Respondent and did not have direct contact with the Landlord.
4. On 7 September 2024, the Applicant entered into fixed term 12 month assured shorthold tenancy agreement ("the AST") with the Landlord (through his agent, the Respondent). The fixed term tenancy contained no break clause. The monthly rent was £3,500.
5. In Dec 2024, the Applicant says that his personal circumstances changed and that he wanted to move out of the Flat as soon as possible. He contacted the Respondent and asked for the tenancy to be terminated as soon as possible. Ideally, he wanted to terminate with almost immediate effect.
6. It is common ground that the Applicant had no legal right to terminate the tenancy early and that the Respondent was entitled to refuse the request for early termination.
7. As well as that being the position of the law in general, it was made clear in the terms of the AST which contained the following warning:

Warning

For the avoidance of doubt, the parties reiterate that this is a fixed-term tenancy agreement where the Landlord has no obligation whatsoever to agree to a request by the Tenant for early termination or surrender.

8. Below that warning was an explanation that if the Landlord did agree voluntarily to allow early termination, then such agreement would be subject to the Applicant being responsible for a fair proportion of the Landlord's costs and losses. In a case where new tenants are found, the AST mentions that the Applicant would be asked to pay (amongst other things) the letting fees charged to the Landlord of up to 11% of the rent plus VAT from the date of termination up to the original expiry date. A worked example was shown in the AST.
9. In effect, therefore, in December 2024 the Applicant was asking to be released from the contractual obligations to which he had willingly committed himself for the remainder of the 12 month period until 6 September 2025 knowing that the Landlord was likely to demand compensation for costs as a condition of such release. That is not a criticism of the Applicant. It is a statement of the legal reality.
10. The Landlord (through his agent, the Respondent) refused to allow the Applicant to terminate immediately, but agreed to allow the Applicant to terminate the tenancy as soon as the Respondent had found a new tenant to take over.

11. In December 2024, the Respondent sent to the Applicant a standard form “Confirmation of your request to terminate tenancy early” form. Amongst other things it says:

It is very likely that your landlord will ask you to contribute to some of the losses they incur due to your request to end the tenancy early, such as:

- A proportion of the letting fee (agent’s reasonable costs) the landlord is contracted to pay for finding you as a tenant. In your case, this would be 9 % of the rent (plus VAT) from the date you are released from the tenancy until the date specified above, and would be approximately £ 2,999.38 including VAT
- A contribution towards duplicate costs such as inventory check in (£156), administering the new tenancy and preparing the tenancy agreement (£480)

Your landlord will not know the exact losses they will incur until we have confirmed the last day of your tenancy.

The figure of £2,999.38 shown in that document amounts to 9% of the rent (plus VAT) from December 2024 to 6 September 2025 and was calculated on the basis that the tenancy would terminate immediately in December 2024. That did not happen and so that particular figure was never demanded or paid by the Applicant. But 9% of the monthly rent plus VAT was clearly stated as the loss of letting fee which would be charged.

12. This document therefore notified the Applicant that, although he had been warned in the AST that the early release letting fee percentage might be up to 11% plus VAT, in this particular case the early release letting fee percentage would be only 9% plus VAT. Nine percent plus VAT was the fee agreed between this landlord and the Respondent in respect of this tenancy.
13. The Applicant signed that document on 17 December 2024 under a statement which says:

By requesting to end my tenancy before the end of the agreed contractual term I understand that I will need to cover the landlord’s reasonable losses, which are permitted under the Tenant Fees Act 2019.

14. For the next few months, the Respondent ‘s witness said and we accept, the Respondent marketed the Flat, responded to enquiries, vetted prospective tenants, and arranged and conducted viewing appointments. There is a factual dispute about exactly how many viewing appointments went ahead. Our decision does not turn on this and we make no finding about it.
15. In about June 2025, the Respondent informed the Applicant that it had found a new tenant whose tenancy would start on 31 July 2025. The Respondent says that after spending about 6 months looking for a replacement tenant, it could only find a tenant at a rent of £3,250, which was £250 per month lower than the Applicant’s current rent. Therefore the proposed new tenancy would start on 31 July 2025 at a rent £250 per month lower than the rent being paid by the Applicant. That would mean terminating the Applicant’s tenancy just over 5 weeks before its contractual expiry date.
16. On 4 July 2025, the Respondent emailed the Applicant offering an early termination on 30 July 2025. And on 7 July 2025, the Respondent emailed the Applicant with a calculation of the early termination fee for a surrender on 30 July 2025. It was calculated as follows:

Item	Amount (£)
9% letting fee plus VAT of the AST rent apportioned over the period 31.07.2025 to 06.09.2025	431.78
Difference between old rent (£3,500) and new rent (£3,250) for the period 31.07.2025 to 06.09.2025	274.00
Apportioned check-in costs for new tenancy	16.03
Apportioned admin fee for new tenancy	49.33
TOTAL	771.47

17. It was made clear to the Applicant at all stages (from the AST onwards) that the early termination (and its accompanying charges) were not binding on either party until they had both executed a deed of surrender.
18. On 30 July 2025, the Landlord and the Applicant signed a deed of surrender which brought the AST to an end on that date. Clause 6 of the signed deed said as follows:
 6. The tenant shall pay to the Landlord £771.47 as a final settlement figure agreed by both parties as a result of the Tenant's request to surrender the tenancy in full and final settlement of the Tenant's liability in relation to the surrender of the Tenancy Agreement and the Premises.
19. The Applicant vacated the Flat on 30 July and paid the charges of £771.47. The Applicant claims that he did so under protest. The new tenant moved in. We did not see the tenancy agreement for the new tenant, but we saw some contemporaneous documentary evidence that the new monthly rent was £3,250. Ms Murdoch gave evidence confirming that the new rent was £3,250. She did not know the length of the term of the new tenancy, but she remembered that it was at least 12 months and could have been as much as 24 months.
20. In this application, which was issued in this Tribunal on 24 November 2025, the Applicant is claiming that the early termination fees were unlawful and unenforceable. He therefore seeks an order under the Tenant Fees Act 2019 Act for them to be repaid to him.
21. The Applicant originally claimed recovery of the whole of the £771.47 charge. Before the hearing, he had dropped his claim with respect to the check-in costs and admin fee and was reclaiming just the larger two amounts, namely:
 - 9% letting fee (plus VAT) for the remaining days of the term - £431.78 ("**the Letting Fee Element**")
 - £274 difference between £3,500 and £3,250 for the remaining days of the term ("**the Rent Element**")

The Statutory regime

22. Section 15(3) of the Tenant Fees Act 2019 entitles the tenant to apply to this Tribunal for the recovery from the landlord or letting agent of the amount of a “prohibited payment”. It is important to emphasise that if a payment is a “prohibited payment”, then this Tribunal can order it to be repaid even if (as in this case) the Applicant has signed agreements to pay them.
23. Under section 3 every payment is a prohibited payment unless it is permitted by Schedule 1. In relation to fees on termination, paragraph 7 of Schedule 1 permits:

Landlord’s genuine losses

“(1) A payment is a permitted payment if it is a payment to a **landlord** in consideration of the termination of a tenancy at the tenant’s request (a) in the case of a fixed term tenancy, before the end of a fixed term, or (b) [*not relevant here*].

(2) But if the amount of the payment **exceeds the loss suffered by the landlord as a result of the termination of the tenancy**, the amount of the excess is a prohibited payment.”

Letting Agent’s reasonable costs

“(3) A payment is a permitted payment if it is a payment to a **letting agent in consideration of arranging the termination of a tenancy** at the tenant’s request (a) in the case of a fixed term tenancy, before the end of a fixed term, or (b) [*not relevant here*].

(2) But if the amount of the payment exceeds the **reasonable costs of the letting agent** in respect of the termination of the tenancy, the amount of the excess is a prohibited payment.”

(Headings and bold emphasis have been added to aid clarity)

24. It is therefore important to determine with respect to each challenged payment whether it is alleged to be landlord’s loss or letting agent’s costs, because each of those require separate tests to be applied.
25. In the case of the Rent Element, there is no doubt that it is alleged to be a loss by the landlord.
26. The Letting Fee Element is not as clear. We will address the nature of that element below.

The Correct Respondent: landlord or agent?

27. It is also not entirely clear whether an order could be made against the letting agent at all in these circumstances. At least in respect of the Rent Element, the payment was payable to the landlord under the terms of the deed of surrender and was paid to the agent only as the landlord’s agent. It is therefore not clear to us whether it was a payment **to** the letting agent within the meaning of the 2019 Act. A similar question may also hover over the Letting Fee Element.

28. However, since the Respondent did not seek to be removed or substituted, we have proceeded on the basis that the agent is a proper party to these proceedings, both in its own right and also as agent for the landlord. For those reasons, we leave open the question of who is the recipient of any particular payment within the meaning of the 2019 Act.

The Applicant's case

29. The Applicant's claim is that the challenged fees do exceed the loss suffered by the landlord and the reasonable costs of the letting agent for the following reasons:

- He says that the Letting Fee Element is double recovery. The Respondent charged its 9% monthly fee to the landlord from 31 July 2025 onwards in respect of the new tenant who moved in on that date. So, according to the Applicant, charging him 9% (plus VAT) for the same period means that the agent will receive the same money twice in respect of the same period (once in respect of the old tenant and once in respect of the new tenant). He claims that that double recovery exceeds the loss suffered by the landlord.
- The Applicant also says that the 9% fee does not represent the reasonable costs of the Respondent, the letting agent, for arranging the termination of the tenancy. He says that finding a new tenant was work which they would have had to have done anyway in anticipation of the end of the Applicant's tenancy. The early termination just meant that they had to do the same work 5 weeks earlier.
- In respect of the Rent Element, the Applicant says that it also exceeds the loss suffered by the landlord, because the landlord failed to mitigate its loss by achieving a higher rent and alternatively because any loss was caused not by the early termination but by a fall in the property market.
- The Applicant relies on a 2024 decision of Judge Tagliavini in this Tribunal (*Thomson & Rolph v Greenhill Investments Ltd* LON/00BG/HTC/2024/0005) in support of his case. We are not bound by that decision, but we have considered it carefully below.

Respondent's Case

30. The Respondent claims that both of the challenged payments were genuine loss suffered by landlord and/or reasonable costs of the agent for arranging the early termination.

Rent element

31. The Respondent says that the Rent Element represented what the landlord had lost as a result of having to let at a lower rent than if the Applicant had stayed. This was therefore a genuine loss directly caused by early termination. The Respondent also says that it used its best endeavours to find the best possible rent on behalf of its client, the landlord. It took 6 months of marketing and showing the Flat in a difficult market to achieve a rent which was slightly lower than the rent agreed by the Applicant in September 2024. The landlord was not legally obliged (either under the

common law terms of the tenancy nor under the statutory regime of the 2019 Act) to accept a lower rent for the remainder of what would have been the Applicant's fixed term. The difference between what the Applicant had contractually agreed to pay for 12 months and the actual rent achieved for the remainder of the 12 months was genuine loss caused by the early termination.

Letting fee element

32. The Respondent's case on the Letting Fee Element requires an understanding of the agreement between the Respondent and the landlord. The letting fee in question was a fee payable by the landlord to the letting agent under an agreement between those two parties. The Applicant was not a party to that agreement. In other words, it was not a fee charged by the Respondent itself to the Applicant.
33. The Respondent's case is that the Letting Fee Element is a proportion of a flat fee in respect of the entire 12 month AST, payable by the landlord to the Respondent as letting agent. Although the flat fee was calculated as a finder's fee in respect of the entire 12 month AST, it was spread out into monthly instalments payable by the landlord to the Respondent. Therefore, despite the early termination of the 12 month AST, the entirety of the 12 month fee (being 9% of the entire year's rent + VAT) was still payable by the landlord to the Respondent. The balance of that flat 12-month fee owing at the early termination date was 9% of the remaining 5 weeks. The landlord still had to pay it to the Respondent. But as a result of the early termination, the landlord now had to pay an additional 9% fee (plus VAT) in respect of the new tenancy. There was, as a direct result of the early termination, an overlap period during which the landlord was paying off the old finder's fee and starting to pay the new one.
34. Another way of expressing the same idea is as follows. By agreeing to pay 9% (plus VAT) of the full year's AST to the Respondent, the landlord was bargaining for a 12 month tenancy. If the landlord had known at the start of the Applicant's AST that it would in fact be a tenancy of 1 year less 5 weeks, he would have negotiated a lower flat fee. The difference between the fee he actually paid and the fee he would have agreed for a shorter tenancy is the landlord's actual loss caused by the early termination.
35. The agreement between the landlord and the Respondent is dated 7 September 2024 and is headed "Letter of Appointment". The Applicant is not a party to it. The relevant terms of that agreement are as follows:
 - The landlord appointed the Respondent as its agent for the purposes of "Rent Management" and not "Full Management". The Respondent's evidence, which we accept, was that "Rent Management" is a service restricted to collecting rent, once the tenancy has started.
 - Clause 4 relates to fees. Clauses 4.1 to 4.3 are in the following terms:

4. OUR FEES

4.1 Our fee is calculated as a percentage of the rent for the entire period of the Contractual Term.

4.2 Our fee for the duration of the Contractual Term becomes due upon the signing of the Tenancy Agreement and each renewal or continuation; for your convenience we accept payment of our total fees by equal instalments throughout the Contractual Term. Our fee is calculated against the total rent amount stated in the Tenancy Agreement and instalments are deducted pro-rata from each rent payment received from the Tenant.

4.3 If you and the Tenant agree to end the Tenancy before its expiry, then the unpaid balance of our fees for the rest of the term of the Tenancy becomes due and payable immediately in full. If the early termination has been initiated by the Tenant we will try, upon your instruction and where practical, to recover the losses you incur.

36. The effect of these clauses is that the fee charged by the Respondent to the landlord is not a monthly fee for a monthly service. It is a flat fee for the entire year which calculated as a percentage of the entire rent for the entire period. It is paid in monthly instalments, but it is not a monthly fee. As stated in clause 4.2, the entire fee becomes due upon day 1 of the tenancy, but payment is spread across the term.
37. The Respondent's witness explained, and we accept, that rationale behind the fee is that the landlord is paying for the letting agent to find a tenant for a fixed period of a year. By finding the Applicant and securing his signature on the original AST, the Respondent has achieved that aim and is entitled immediately to charge a percentage of the entire year's rent, akin to a finder's fee, albeit to be paid off in instalments. If the landlord agrees with the tenant (at the tenant's request) to shorten the term, then that should not deprive the Respondent of its fee which was earned in full on day one. The mechanism of clause 4.3 allows the Respondent to recover the balance of the full term fee from the landlord in that scenario. In such a case, the landlord will have suffered that balance as a loss caused by the early termination. Had the Applicant only signed up for 11 months in the first place, then the overall entire term fee would have been 9% of 11 months' rent not 9% of 12 months' rent. The difference between the two represents the loss suffered by the landlord. The fact that a new finder's fee needs to be incurred in respect of a new tenant does not detract from the fact that the previous fee turned out to have less value to the landlord than it should have done, as a result of the early termination requested by the outgoing tenant.
38. Charging the outgoing tenant the unpaid balance of the annual fee as loss and also charging a new full-term fee for a new tenant starting earlier than originally expected is not therefore double recovery.
39. The Letting Fee Element therefore represents the proportion of value of the full-term letting fee which the landlord had lost as a result of the Applicant's AST being shorter than it otherwise should have been.

Analysis and decision

The Rent Element

40. In respect of the Rent Element, the Applicant relies on the *Greenhill* case. At paragraph 17 of that decision, the Tribunal said this:

“Having accepted an early termination of the tenancy, the landlord is liable to mitigate his losses. The applicants cannot be held responsible for the alleged changes in the letting market. Arguably, had the landlord been able to let the subject property for more than the £2,800 pcm they might argue they should have been entitled to receive the difference.”

41. Although this decision is not binding on us, we have considered it carefully. We respectfully disagree that the same reasoning can apply in this case. It seems to us that there is no basis for imposing a duty on the landlord to mitigate loss in a case where the tenant requests early termination. The landlord does not have any contractual or other obligation to agree to early termination. The landlord does not have any obligation to the outgoing tenant to expend any effort in finding a replacement tenant or in securing the highest possible rent. The outgoing tenant, as here, always has a choice whether to agree to the early termination terms which are offered by the landlord. It is important to note that, in our judgment, paragraph 7(2) of Schedule 1 to the 2019 Act is designed only to protect the outgoing tenant against charges which are not **genuine** losses of the landlord. It is not designed to protect the outgoing tenant from entering into a bad bargain with the landlord. If the landlord could have achieved a higher rent, that does not prevent the difference from being a genuine loss.
42. Even if the landlord did have a duty to mitigate his loss, we would hold in this case that he did satisfy that obligation. The landlord’s agent spent 6 months trying to achieve a rent as close as possible to the rent of the outgoing tenant. The result, in a falling market, was a rent which was just over 7% short of the outgoing tenant’s rent. There is no evidence that the landlord’s agent could have achieved a higher rent.
43. Similarly we do not accept that the Applicant in this case is being held responsible for a falling market. This part of the 2019 Act is not designed to protect tenants from the consequences of a falling market. A lower rent for the incoming tenant is the natural consequence of an early termination in a falling market and is a “genuine loss” suffered by the landlord as a result of the early termination. The intention of the Act in our judgment is to ensure that landlords and their agents do not inflate their losses in order to charge exorbitant and unwarranted amounts, not to reallocate the commercial risks involved in negotiating a surrender of a tenancy.

The Letting Fee Element

44. In respect of the Letting Fee Element, we accept the Respondent’s case.
45. When properly analysed, it was not charged by the Respondent as a fee for “arranging the termination of a tenancy”. It was, in fact, a loss suffered by the landlord as a result of the early termination.
46. The Applicant relies on the *Greenhill* case in support of this part of his application as well. The Tribunal held at paragraph 16 of its decision in that case that:

“the landlord’s loss of letting fees is essentially a ‘double recovery’ as the payment of those fees could reasonably be transferred to the new letting of the premises and do not represent a genuine loss”

47. On the facts of this case, the landlord’s loss of letting fees is not double recovery because of the particular structure of the arrangement between the landlord and the Respondent and as a result of the analysis set out above.
48. For all the above reasons, we have made the order set out above.

Name: Judge Timothy Cowen **Date:** 29 September 2026

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).