



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

**Case reference** : **LON/00AC/HTC/2020/0016**

**Property** : **Flat 4, Salvin Court, 96 Torrington Park,  
London N12 9PJ.**

**Applicant** : **Konrad Biadun**

**Respondent** : **A.Y. Awoniyi aka Richard Abebe**

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

**Venue** : **Paper Decision**

**Judge** : **Martyński**

**Date of decision** : **5 May 2021**

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**ORDER AND DECISION**

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**Order**

1. The Respondent, A.Y. Awoniyi, aka Richard Abebe must re-pay to the Applicant the sum of £518.46 within 21 days from the date of this decision.

**Background**

2. The Respondent advertised a room to let at Flat 4, Salvin Court in Sparerooms.com. The advertisement was for a double room, en-suite, with bills included at a rent of £700 per month with a deposit of £700.
3. The Applicant contacted the Respondent about the room and went to meet with the Respondent and view the room on 25 February 2020. The parties agreed on the payment of a holding deposit of £680 which was paid on that day.

4. The Respondent then sends a text to the Applicant on 2 March asking him when he wanted to move in and start the tenancy. The Applicant replies saying that he has been busy and says that he would probably move in the next week.
5. The Applicant states that he called the Respondent on 7 March and asked if he could move in the following week and asked him to send a copy of the tenancy agreement by email but that this was never sent. Unlike the texts referred to in this decision, there is no record of this call.
6. The Respondent then sends another text to the Applicant on 12 March again asking when the Applicant will move in. The Applicant replies saying “*Tomorrow*”.
7. On the 13<sup>th</sup> March the parties are exchanging texts arranging for the Applicant to come over and move in. The Applicant says that he has paid the first month’s rent. The Respondent asks, how much? The Applicant replies; “*As agreed first month 680£*”. There are then numerous text messages between the parties regarding a dispute over the amount of the rent. The Respondent maintains that the agreed rent was £700 resulting in the Applicant saying; “*If that is the problem please pay me back all and I need to find another place please. Thank you*”; and the Respondent saying; “*If you’re not sure over £20 then let’s leave it*”.
8. Later in the text exchange that day, the Respondent says; “*For your information. Your deposit was a holding deposit. Which was to hold the room off the market. As you have decided not to go through with moving in. You have forfeited your holding deposit and will not be receiving it back. If you have any queries feel Free to contact a lawyer to get in contact with mine. For more proof have a look at the following attached picture as that shows you’re not entitled to your deposit back as I have taken the room of [sic] the market as to u told to me to. You are entitled to Your first month rent which you will receive today*”.
9. The written tenancy agreement was never signed.
10. The Respondent repays the first month’s rent but refuses to repay the holding deposit.

### **The Law**

11. The relevant regulations regarding holding deposits are set out in Schedules 1 & 2 to the Tenant Fees Act 2019.
12. The regulations state that a landlord is entitled to take a holding deposit [paragraph 3 of Schedule 1]. However, that deposit cannot be more than one week’s rent.

13. The regulations also state that a landlord must re-pay a holding deposit if the landlord and tenant do not enter into a tenancy agreement within 15 days starting with the payment of the deposit [paragraph 3 of Schedule 2]. However, there is an exception to this. The landlord does not have to repay the deposit (which of course is limited to one week's rent) if the landlord takes all reasonable steps to enter into a tenancy agreement within the 15 days mentioned above and the tenant fails to take all reasonable steps to enter into the agreement [paragraph 11 of Schedule 2]. If this exception applies, the landlord can only keep the deposit if he gives the tenant a notice in writing. That notice must be given within 7 days from the date of the expiry of the initial 15 days and must explain why the deposit is not being repaid.

### **Decision**

14. I think that it is more likely than not that the rent was agreed at £700 per month, that appears to have been the advertised amount.
15. The holding deposit is limited to one week's rent. That amounts to £161.54. Therefore the balance of £518.46 (that is £680 – £161.54) must be repaid to the Applicant.
16. I consider that the Respondent did take all reasonable steps to enter into the tenancy agreement before the period of 15 days expired on 10 March. He sends two texts chasing the Applicant (one is outside of the 15-day period). I consider that the Applicant did not take all reasonable steps. From the text messages, it looks like the Respondent was chasing the Applicant and that until the last moment, the Applicant was not providing any definite information about when he was going to enter into the agreement.
17. I further consider that in his text messages sent on 13 March, the Respondent has set out in writing the reasons why he was not going to return the holding deposit. This notice was given within 7 days of the expiry of the 15-day period.
18. The Respondent is therefore entitled to keep the sum of £161.54.

**5 May 2021**

**Deputy Regional Tribunal Judge Martyński**

## **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).