



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

Case reference : **LON/00AQ/HTC/2021/0002**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **28 Southbridge Road, Croydon,
CR0 1AE**

Applicant : **Oluseyi Aina**

Respondent : **Janice Oliver**

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

Tribunal members : **Judge Robert Latham
Duncan Jagger MRICS**

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

Date of decision : **28 April 2021**

ORDER

The tribunal makes the following Order, pursuant to section 15 of the Tenant Fees Act 2019 (“the Act”):

(1) On or before 12 May 2021, the respondent shall re-pay the applicant the amount of £300 paid in respect of a holding deposit for 28 Southbridge Road, Croydon, CR0 1AE; and

(2) In accordance with section 15(11) of the Tenant Fees Act 2019, such Order is enforceable by order of the county court as if the amount payable under the Order were payable under an order of that court.

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers to which neither party has objected. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined on paper. The documents that I was referred to are the application form and the cases filed by each of the parties. The order made is described at the end of these reasons.

The Application

1. On 21 December 2020, the Applicant applied to the tribunal under the Tenant Fee Act 2019 (“the Act”) for an order that the respondent repay the sum of £300 paid as a holding deposit which, despite requests, the respondent has not repaid. The Applicant stated that he was content for a paper determination.
2. The Applicant is a student. He states that on 28 November 2020, having seen an advert for a room on "spareroom.com", he contacted the Respondent. He inspected the property at 28 Southbridge Road, Croydon, CR0 1AE and expressed an interest in the property. The Respondent requested a holding deposit of £300. On 29 November, the Applicant made the payment by bank transfer. He has provided documentary evidence of this.
3. The Applicant subsequently learnt that the holding deposit was a prohibited payment. The rent was £500 per month and the maximum permitted payment was £115.38. The Applicant decided to request a refund of the payment. The Respondent stated on the phone that she would only return £100 and would retain £200 as "admin fees". Following this conversation, the landlord told the Applicant that the property had been let out by her husband on the morning of 30 November.
4. On 29 January 2021, the Tribunal gave Directions. By 17 February, the Respondent was directed to email the Tribunal a statement in reply together with any documents upon which he seeks to rely.
5. The Respondent has filed a statement. The Respondent does not address the issue that the payment was a “prohibited payment”. She rather suggests that the Applicant had difficulty in raising the money for the rent and that she decided to let the property out for a fortnight to give him time to raise the money. She indicated that a daily rent would be charged which would be forfeited if he did not take up the tenancy. On 30 November, the Applicant telephoned her and stated that he no longer wanted the property. The Respondent suggest that this application has only been issued because she was unwilling to return the full sum of £300.

6. The Applicant has filed a statement in response. He disputes the Respondent's account. He has provided a copy of a text message, dated 1 December, in which he refers to the fact that one weeks' rent is the maximum permitted as a holding deposit and that any charge in excess of this is a banned fee. He also attaches his email exchange with the Shelter Helpline.

Our Determination

7. The Tribunal accepts the Applicant's account which is corroborated by the documentary evidence which he has provided.
8. Section 1(1) of the Act provides that: "A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England".
9. By section 3(1): "For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1."
10. Holding deposits are dealt with in paragraph 3 of Schedule 1. Schedule 2 sets out the circumstances in which a person who received a holding deposit must repay it. Section 15 of the Act makes provision for the recovery of amounts paid.
11. The payment of £300 by the Applicant falls within the definition of a "holding deposit". As the payment represents more than one weeks' rent, the excess over £115.38 was a "prohibited payment".
12. Further, the Respondent was required to pay the permitted sum of £115,38 as the Tribunal is satisfied that the landlord decided before the 14 day "deadline for agreement" not to enter into a tenancy agreement with the Applicant (Schedule 2, paragraph 3(b)).
13. Even on the Respondent's account, the landlord and tenant had failed to enter into a tenancy agreement before the "deadline for agreement" (see Schedule 2, paragraph 3 (c)). The landlord would not be permitted to rely on the exceptions in paragraphs 10, 11 or 12 because of the "prohibited payment" which had been received (Schedule 2, paragraph 13(a)).
14. Accordingly, by its Order made under section 15(9) of the Act, the Tribunal requires the Respondent to repay the whole amount of £300 on or before 12 May 2021.
15. By section 15(11) of the Act, this Order is enforceable by order of the county court as if the amount payable under the Order were payable under an order of that court.

Judge Robert Latham
28 April 2021

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).