



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) AT 10
ALFRED PLACE, WC1E 7LR**

Case reference : **LON/00AT/HTC/2021/0008**

HMCTS code : **P: PAPERREMOTE**

Property : **36 Montague Road, London TW3 1LD**

Applicant : **Mr Merwyn D'Cruz**

Representative : **N/A**

Respondent : **Mr A. K. Indrayen**

Representative : **N/A**

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

Tribunal member : **Judge Tagliavini**

Date of decision : **29 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal was referred are contained in the applicant's documents (various pages) and the respondent's bundle pages 1 to 57.

The tribunal's summary decision

- (1) The tribunal directs that the sum of £519 be repaid to the applicant by the respondent within 14 days of the date of this decision.**
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The application

1. This is an application for an order for the recovery of a prohibited payment/holding deposit paid in respect of a prospective tenancy/licence at 36 Montague Road, London TW3 1L ('the premises') pursuant to section 15 of the Tenant Fees Act 2019 ('the 2019 Act').

The applicant's case

2. The applicant asserts that he paid the respondent landlord a total sum of £519 by 19 December 2020 in respect of a prospective letting of a room at the subject premises in which the respondent landlord also resided, with effect from around 30 December 2020. However, on 22 December 2020, and before any agreement was signed, the applicant informed the respondent that he was not able to take up occupation due to his need to self-isolate elsewhere due to his vulnerability and fear of catching COVID-19. The applicant now seeks the return of the holding deposit of £519.
3. In support of his application the applicant has provided to the tribunal a hand-written and signed document headed 'Temporary Receipt' and dated 19(?) December 2020 acknowledging payment of £519 by the applicant to the respondent and described as a 'holding deposit' and made up of two payments i.e., £250 and £269).

The respondent's case

4. The respondent asserted that the first (undated) receipt provided to the applicant prior to 19 December 2020, acknowledged a non-refundable payment from the applicant of £250 pending credit and identity checks. This receipt was replaced by a second dated receipt (relied upon by the applicant)

when a further payment of £269 was paid to the respondent. The respondent asserted he had been unaware of the 2019 Act (effective 1 June 2019) and the restriction on holding deposits to one week's rent and that the restrictions applied to both tenancy and licence agreements.

5. Further, the respondent asserted that the second payment of £269 was 'converted' to a 'security deposit' and wrongly referred to as a 'holding deposit'. As the security deposit was in respect of a licence rather than as a tenancy, the tenancy deposit rules did not apply. The respondent queried the veracity of the applicant's claim of being unable to move into the subject premises but despite several requests for the return of the £519, no repayment of all or part of the has been made by the respondent. The respondent also asserted that due to the applicant's behaviour and his failure to take up occupation at the said premises, he is entitled to consider that the security deposit is non-refundable.

The tribunal's decision and reasons

6. The tribunal finds that the applicant paid to the respondent a holding deposit of £519 in respect of the former's proposed occupation of one room at the said premises, from about 30 December 2020 for a period of 6 months. The tribunal finds that the holding deposit falls within Schedule 2 of the 2019 Act and was a prohibited payment and therefore, directs the respondent to return this payment to the applicant within 14 days of the date of this decision.
7. The tribunal finds that the parties conditionally agreed to enter into an arrangement, whereby the respondent agreed to let to the applicant one room at the said premises for a period of 6 months at an unspecified rent/fee and subject to credit/identity checks. The tribunal finds that the respondent was unaware of the Tenant Fees Act 2019 and its prohibition on certain payments being demand by landlords/licensees from prospective tenants/licensees.
8. The tribunal does not accept that the holding deposit of £519 as described by the respondent in his receipt(s) was or could be 'converted' into a security deposit and finds that this assertion has been fabricated to fit the circumstances in which the respondent now finds himself.
9. The tribunal finds that the proposed tenancy/licence agreement was not entered into by the parties and no consent was given by the applicant for all or part of sum of £519 to be retained by the respondent as a security deposit.
10. The tribunal finds that the respondent was not entitled to retain all or part of the holding deposit of £519 under paragraph 3(c) of Schedule 2 of the Tenant Fees Act 2019. Therefore, the tribunal directs that the sum of £519 be repaid to the applicant by the respondent within 14 days of the date of this decision.

Rights of appeal from the decision of the tribunal

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).

Extract from Tenant Fees Act 2019

SCHEDULE 2

Treatment of holding deposit

Application

1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England.

Interpretation

2(1) In this Schedule “the deadline for agreement” means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.

(2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule.
Requirement to repay holding deposit

3 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 fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.

4 If paragraph 3 applies, the deposit must be repaid within the period of 7 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.

5(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 sub-paragraph (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 fail to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the deadline for agreement.

Exceptions

6 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—

(a) towards the first payment of rent under the tenancy, or

(b) towards the payment of the tenancy deposit in respect of the tenancy.

7 If all or part of the amount of the deposit is applied in accordance with paragraph 6(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.

8 Paragraph 3(b) or (c) does not apply if—

(a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,

(b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and

(c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.

9 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 tenant’s action in providing false or misleading information into account in deciding whether to grant such a tenancy.

10 Subject to paragraph 13, paragraph 3(c) does not apply 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.

11 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the landlord if—

(a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and

(b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord 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.

12 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent 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.

13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) 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.