



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

Case reference CAM/00KG/HTC/2021/0004

HMCTS Code P:PAPERREMOTE

Property : 28 Celedon Close Grays Essex RM16 6PZ

Applicant : Izabela Zeybek and Ricki Brooker

Respondent : Griffin Residential Group

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

Tribunal : Mary Hardman FRICS IRRV(Hons)

Date : 21 September 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers 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 all issues could be determined on paper. In accordance with the directions, I have considered the application and supporting documents and the respondent's reply and supporting documents.

The application and determination

1. On 28 June 2021 the tribunal received the application from Ms Zeybek and Mr Brooker for the return of a holding deposit of £225 paid to Griffin Residential Group on 18 March 2021.

2. The tribunal gave directions on 28 July 2021 providing for the matter to be determined on the papers unless either party made a request for a hearing by 31 August 2021 or the tribunal, having reviewed the papers, considered that a hearing was required. No request was made, and I did not consider a hearing was necessary to determine the issue fairly and justly.

The law

3. Schedule 2 to the Tenant Fees Act 2019 deals with the treatment of holding deposits.
Paragraph 3(b) provides that the holding deposit must be repaid if: *“the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing”*
and Paragraph 3(c) provides that the holding deposit must be repaid if: *“the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement”*
4. For reasons that are outside the scope of the dispute between the parties I am satisfied that in this case “the deadline for agreement” was 1 April 2021.
5. However, there are a number of exceptions to the requirement that the holding deposit must be repaid. Thus, if one of the exceptions applies the landlord need not repay the holding deposit.
6. For the purpose of this decision the relevant exception is to be found in paragraph 9:-
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.
7. Section 15 of the 2019 Act states that the relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of any prohibited payment. Section 15(9) states that on an application the Tribunal may order the landlord or letting agent to pay all or any part of the amount to the relevant person within the period specified in the order.

The applicant's case

8. The applicants stated in the application that they had paid a one week holding deposit of £225 on 18 March 2021 in respect of a tenancy at 28 Celedon Close, Grays, Essex. They provided email communications with the respondent and a bank statement as evidence.
9. The first email was dated 18 March 2021. It referred to an earlier conversation and confirmed the receipt by the respondent of the 'holding fee' of £225. The respondent stated that – *“As explained should you fail your referencing due to bad credit, insufficient income, no residency status, poor landlord checks or you withdraw your application this holding fee will unfortunately be forfeited.”*
10. The following day, 19 March 2021, the respondent wrote to the applicants via email to say *‘Robbie and I clarified with you and you understood, if he failed referencing due to bad credit or any ccj's you would lose the one week holding fee. You confirmed you understood and said he had bad credit but still wanted to proceed as the next stage would be a guarantor but unfortunately Ricki come back with a CCJ and unfortunately homelet will not accept this and there is no next stage for a guarantor’*
11. The applicants made the application to the tribunal on 28 June 2021 and on the same day wrote to the respondents, copied to the tribunal, to say that Ms Zeybek had viewed the property with Griffin's agent Robbie and that it gave her false hope of passing on the references. She had made the payment over the phone with Zoe from the agent and said that she was assured that *‘providing we don't have CCJ or bankruptcy Ricki would be able to pass.’*
12. The refusal was received an hour later.

The respondent's case

13. In their evidence the respondent provided an undated printed copy of the application form completed by Mr Brooker which stated 'No' in response to the question – *Any CCJs or adverse credit history.*
14. They also provided a copy of the HomeLet report which showed that there was one CCJ outstanding against Mr Brooker from 20 March 2019 for £591 and a status of *'Not Accepted'* for the reasons of *'Adverse Credit History'*.
15. In an email of 19 March 2021, an earlier part of the chain referred to in paragraph 10 above but not relied upon by the applicant, Ms Zeybek says that *‘my partner has checked his experian credit report and it was not showing any CCJ so he has tried and provided information true to his knowledge as he was not aware of it’*

16. On 19 March 2021 the respondent wrote to the applicants to say that Mr Brooker had '*come back with a CCJ and unfortunately homelet will not accept this*'. They were not able to then proceed to the next stage on the basis of a guarantor.
17. In a subsequent e mail exchange of 20 March 2021 Ms Zeybek said that it had been explained why the fee was retained but felt that their agents had made her falsely believe they would pass the references, which is why they made the payment.
18. In a subsequent e mail on the same day she said that the conversation with Robbie when viewing had been very light-hearted and that he had said there were people with worse credit-scores accepted, '*as long as there is no bankruptcy*'

Discussion

19. The tenancy was not completed, and the starting point is that the applicants are entitled to the return of the holding deposit.
20. However, the respondents are relying on the exception in paragraph 9 of the act in that they assert that the tenant provided false or misleading information to the landlord or letting agent and it was reasonable for the landlord to take into account how the information provided differed from the 'correct' information. Alternatively, that the landlord is reasonably entitled to take into account the fact that the tenant had provided false or misleading information in deciding whether to accept him as a tenant.
21. The requirement is therefore firstly for the tribunal to decide whether the tenants did indeed provide false or misleading information.
22. The tribunal accepts that the second applicant stated on the application form that there was no CCJ or adverse credit history. The Homelet report (Landlord Insurance, Tenant Referencing and Tenant Insurance) states the date, court and reference of the CCJ. Further the applicant does not refute the presence of a CCJ but says that an experian credit report did not show it.
23. The tribunal also accepts that the applicant may have done a search and the CCJ was not flagged but it remains the fact that there was a CCJ against him from 2019 and to state otherwise was provision of false information.
24. Paragraph 9 incorporates a reasonableness test. If it is engaged the exceptions in paragraphs 3 (b) and (c) are disapplied and the respondent does not need to return the holding deposit.

25. The tribunal needs to decide if the applicants' failure to disclose the CCJ is such that it would be unreasonable for the landlord to refuse to grant the tenancy based on this omission or false statement.
26. The data provided by Mr Brooker was screened using what is presumably an automated process. It identified a CCJ and returned a status of 'Not acceptable' with the reason given as 'Adverse Credit History' and provided details of the CCJ. It does not seem to be unreasonable in these circumstances for the landlord to decide not to grant the tenancy both on the basis of 9(a) - the information provided by the tenant and the correct information are materially different and also (b) that the landlord was entitled to be concerned that the tenant has provided incorrect financial information in what is essentially a financial relationship.

Decision

27. I determine that the exception in Paragraph 9 applies and the landlord is entitled to retain the holding deposit of £225.
28. However, I would encourage the letting agents to read the HM Government publication - Tenant Fees Act 2019: Guidance for landlords and agents. At page 35 in the section on holding deposits it states – *“Even where you are entitled to retain a tenant’s holding deposit, you should consider whether it is necessary to do so. We encourage landlords and agents to decide on a case-by-case basis whether to retain part of the deposit and understand that they may only need to cover specific costs which have been incurred (for example, referencing checks). You should be able to provide evidence of your costs to demonstrate that they are reasonable”*

and in the light of this, particularly given how quickly the decision came back, I suggest that they may wish to consider whether they return at least part of the deposit to the applicants.

29. It is also clear that they were aware of concerns on the likely credit rating for Mr Brooker but went ahead anyway and I would further suggest, in line with the guidance on page 33 of the publication, that they may wish to review their processes prior to accepting a holding deposit from a tenant. This would avoid such instances in the future and the potential adverse publicity for them that may flow from this.

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).