



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

Case Reference : **LON/00AM/HTC/2021/0010**

HMCTS code : **P: PAPER**

Property : **3 Leighfield House, Hackney,
London N4 2TR**

Applicant : **Mr M C Brennan**

Respondent : **Ludlow Thompson SLM Ltd**

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

Tribunal Members : **Tribunal Judge Prof R Percival**

**Date and venue of
determination** : **8 September 2021
Remote**

Date of Decision : **8 September 2021**

DECISION AND ORDER

Covid-19 pandemic: description of hearing

This has been a determination on the papers, consented to by the parties. A face-to-face hearing was not held because all issues could be determined on paper.

The application

1. The Applicant seeks a determination under section 15(3) of the Tenant Fees Act 2019 for the recovery from a letting agent of a prohibited payment. The Respondent is Ludlow Thompson SLM Ltd.
2. The application relates to a fee of £393.54 paid by the Applicant to the Respondent in connection with the Applicant's withdrawal from a tenancy agreement, and the provision of a new tenancy agreement naming the person who replaced the Applicant renting a shared property.
3. Directions were issued on 12 July 2021. The application form and supporting documents were ordered to stand as the Applicant's statement of case. Provision was made for a bundle in response to be provided by the Respondent, and a further brief reply by the Applicant.

The Applicant's case

4. The Applicant argues
"Sections 1-2 of The Tenant Fees Act prevent a landlord or agent from requesting a prohibited payment. Section 3 says a prohibited payment is anything not permitted under schedule 1. Schedule 1 at [paragraph] 6 states that a payment on variation, assignment or novation of a tenancy is permitted unless it exceeds £50, or the reasonable costs incurred."

The Respondent's case

5. The Respondent takes no issue with the legal submissions made by the Applicant, but relies on the argument that the costs were reasonably incurred. The Respondent appears to rely on a contractual provision in the tenancy agreement that seeks to regulate the replacement of one of the group of tenants with another, which states that certain charges will be payable by the departing tenant. The clause refers to a tenant breaching the agreement, and the Respondent's response appears to suppose that the replacement of a tenant by agreement with the

landlord at a time other than the end of the agreement or a break clause amounts to breach.

6. In advance, the Respondent indicated to the Applicant that the anticipated costs would break down as follows (figures including VAT):

Referencing the new tenant:	£23.94
Inspection	£58.80
Creating new tenancy agreement	£274.80
Re-registration of deposits	£36

7. This is the total charged to the Applicant.
8. In respect of the creation of the new tenancy agreement, the Respondent, in its response to the Applicant's case, provided an itemised list of tasks, against time and the hourly rates charged by them. These include such headings as issuing replacement guidelines to the landlord and tenants, negotiating certain matters with the landlord, collecting rent and the deposit from the new tenant and providing advice and assistance on the return of the Applicant's deposit.

Determination

9. Although neither party addresses the issue, the Respondent is clearly a letting agent for the purposes of the 2019 Act, and the prohibitions in section 2 apply. The Applicant accurately states the law. The Act is available here: <https://www.gov.uk/government/collections/tenant-fees-act>.
10. Paragraph 6 does not impose a general reasonableness test, as does the legislation in relation to service and administration charges. Rather, it creates a clear limit by reference to a determinate sum – £50 – and then adds an additional reasonableness test. The legislative choice to provide the express sum must be given appropriate weight. If the Tribunal were to approach a charge to which the paragraph applies as if the provision only created a general reasonableness test, our decision making would not be taking proper account of the determinate sum.
11. The better approach, then, is that, to escape the £50 upper limit, a landlord or letting agent must show that there is some proper particular consideration or reason for the Tribunal to conclude that £50 should not be considered a reasonable limit. This need not be something truly exceptional, but the landlord or letting agent must be able to point to something that makes the charge at least somewhat out of the ordinary run of similar transactions.

12. This approach is in keeping with the general policy of the Act, which is to prohibit and closely control the fees to which it applies, not merely to regulate their reasonableness.
13. The Ministry of Housing, Communities and Local Government has produced useful guidance to the Act, including a document aimed at landlords and letting agents. The Applicant has quoted passages from the guidance, which may be found at <https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>.
14. The guidance is not authoritative as to the proper interpretation of the law, and nor does it purport to be. Nonetheless, it is helpful in considering how paragraph 8 should be approached.
15. At page 7, the guidance states

“The general expectation is that the charge will not exceed £50. You should provide evidence to demonstrate the reasonable costs of carrying out the work if you wish to charge above £50.”
16. There is a question and answer section towards the end of the document. The guidance answers the question “can I charge a tenant for a change of sharer?” in similar terms to the statement quoted above. It then goes on to consider “If a tenant has found a suitable replacement tenant, can I still charge more than £50 for a change of sharer fee?”. It is not contested that the Applicant found his replacement. The answer to this question, in part, is

“It is unlikely that you could justify charging a fee above £50 in this circumstance. The costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit should be small.”
17. If nothing else, this approach clearly does not see the £50 figure as being a way of merely deeming a moderate charge to be always reasonable, and otherwise imposing a general reasonableness test.
18. In this case, the letting agent has provided invoices for those charges which were incurred by outside contractors. In respect of its own charge for creating a new tenancy agreement – the largest single component – it has provided a schedule of costs.
19. However, at no point has it made a case for this transaction being anything other than an ordinary, run of the mill example of tenant churn in shared rented housing.

20. Indeed, this case provides a good example of why this is the proper approach. Here, in a perfectly normal case of the replacement of a tenant in a shared property, the Respondent is seeking to charge nearly 800% of the determinate statutory limit, and in doing so is seeking to charge a departing tenant for what should be considered the routine tasks of a managing agent (see the tasks, or some of them, attributed to “creating a new tenancy”).
21. Rather than embarking on a detailed examination of the reasonableness of each of the itemised headings making up the charge, as is the case with service and administration charges, in a case such as this, the appropriate remedy, in the absence of any real argument for escaping the £50 limit, is that the Tribunal should simply impose that limit.
22. Finally, I note that both parties engaged in criticisms of the other of one sort or another. None had any relevance to the decision required to be made by the Tribunal, and have accordingly not been summarised.

Order

23. The Respondent must pay the Applicant the sum of £343.54 within 21 days of the date of this decision.
24. Section 15(11) of the 2019 Act applies to this order, such that it is enforceable by order of the county court as if the amount payable were payable under an order of that court.

Rights of appeal

25. 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 London regional office.
26. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
27. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 8 September 2021