FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOAN/HNA/2021/0024**
HMCTS Code	**:**	**V:CVPREMOTE VHS**
Property	**:**	**6 Bellamy Close, London W14 9UT**
Applicant	**:**	**Top Holdings Limited**
Representative	**:**	**Mr F Grasso and Mr A Walker**
Respondent	**:**	**London Borough of Hammersmith & Fulham**
Representative	**:**	**Mr E Gordon-Saker – Counsel together with Ms D Schopen of Trading Standards and Mr J Borufka**
Type of Application	**:**	**An appeal against a financial penalty under section 249A of the Housing Act 2004 in relation to a breach of section 1 of the Tenant Fees Act 2019**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr C Gowman MCIEH MCMI BSc**
Date and venue of Hearing	**:**	**Remote video on 28th October 2021**
Date of Decision	**:**	**22 November 2021**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V - CVP Remote. A face to face hearing was not held because it was not considered practicable and the issues could be determined in a remote hearing.

The documents to which the Tribunal were referred were contained in two bundles of xxx pages the contents of which have been noted.

DECISION

The Tribunal determines that the Applicants have breached section 1 of the Tenant Fees Act 2019 (the Act) by requiring the tenant Mr Jindrich Borufka to make a prohibited payment and finds that the financial penalty of £3,000 as sought by the Respondent local authority is reasonable and payable within 28 days.

BACKGROUND

1. On 20th August 2020 the London Borough of Hammersmith & Fulham (the Council) served on Top Holdings Limited (the Applicant) a Notice of Intent under section 8 of the Act. The Notice alleged that the Council was satisfied that on 12th March 2020 the conduct of the Applicant amounted to a breach of the Act in that the tenant, Mr Borufka, was required to make a prohibited payment. The initial penalty considered was £5,000. The basis upon which it is said there had been a breach of the Act is as follows:

"As a landlord you required the tenant to make a prohibited payment to you in connection with their tenancy. This prohibitive payment is retaining part of the deposit for admin purposes. Details as follows:

- *A licence to occupy a room as a holiday let agreement was entered into by Top Holdings Limited (the Licensor) signed by Mr Francesco Grasso on behalf of the Licensor and Mr Jindrich Borufka on 24th August 2019 in respect of a room at 6 Bellamy Close, London W14 9UT.*
- *A deposit of £540 was paid as deposit for the room.*
- *Clause 6 of the licence to occupy agreement states that a charge of one week rent will be deducted from the deposit for general administration charges relating to the application including a check in and check out inventory, background checking, marketing of the room, drafting of the contract, rent collection etc after vacating the room.*
- *Mr Borufka gave notice to vacate the room on 31st January 2020 with effect from 24th February 2020 by email. He said he was happy to cover the further week's rent payment to the end of that month.*
- *On 28th February 2020 Mr Borufka received an email from Emily Wilson (from the email address topholdingsuk@gmail.com) to state that only £180 of the deposit would be returned to him. £180 was retained to cover the last week of the month's rent as agreed but the other £180 was kept as an admin fee as per the reasons covered in clause 6 above. Only £180 was returned."*

2. The Notice of Intent then went on to set out the permitted payments under the Act and asserting that any sums which are a condition on the granting of a continuance assignment termination or renewal of a tenancy, are banned outright which includes payments to the third parties. Administration charges are supplementary charges and are prohibited payments.

3. The Notice went on to confirm that the local authority had reviewed the following documents:

- Licence to occupy as a holiday let dated 24th August 2019
- Email from topholdingsuk@gmail.com dated 15th August 2019 regarding the tenancy and deposit
- Emails between Mr Borufka and Miss Wilson from topholdingsuk@gmail.com, from 31st January 2020 to 28th February 2020, copy of bank statements from Mr Borufka showing original payments made to bank account of Marianna Van Orden on 18th August 2019 and 24th August 2019 and bank credit from M Van Orden dated 28th February 2020 for £180. It is said that based on the above evidence the authority was satisfied that Top Holdings had committed a breach of the Act.

4. The Applicant was told of their entitlement to make representations which they did, and this resulted in a Final Notice being issued to Top Holdings dated 26th April 2021 where the sum demanded by the local authority had been reduced to £3,000. The details of the breach were largely a repetition of that contained in the Notice of Intent.

5. A statement of case made by Mr Francesco Grasso dated 19th August 2021 sets out the basis upon which the Applicant appealed to the First- tier Tribunal in respect of the civil penalty. The statement accepts that the Applicant managed and operated the Property and was the landlord to the tenant. The appeal was against both liability and the quantum of the penalty.

6. It is said on behalf of the Applicant that the Tenant Fees Act only came into existence on 1st June 2019 shortly before the licence agreement was entered into with Mr Borufka. It appears that, erroneously, the old form of agreement was said to have been used, which permitted a charge of the equivalent of one week's licence fee for administration costs. The statement says that after the enactment of the Act all agreements were amended, although not in the case of Mr Borufka's licence agreement.

7. In the statement it is suggested that the Applicant's manager, Miss Wilson had originally considered that a sum the equivalent to one week's rent was payable by the tenant as an administration fee under the terms of the then existing agreement, but this was due to her misunderstanding of the terms of the Act. Reference is made to an email sent by Miss Watson where it states that the deduction was being made from the deposit for administration purposes but apparently on checking with the director, she was told that such deductions were no longer lawful and therefore the proposed deduction was not made. It seems that instead a Deed of Surrender was required, and this was prepared by a legal consultancy (Oak Legal) who apparently have a standard fee for the £180 for each

such deed. Oak Legal Consultancy appears to be a company incorporated outside the United Kingdom with an office in the principality of Monaco. It appeared to operate from a property in London at 52 Berkley Square, which would seem to have been the address of a number of companies.

8. It is said that the Council had made belated attempts to contact Oak Legal to determine their position but had not been able to do so as it appears they had suspended their London presence in March of 2020. Notwithstanding this, it appears that the Applicant directly contacted them, and they were able to provide an email to the Council, which is included within the bundle of papers before us.

9. It is the Applicant's case that the sum of £180 deducted from the deposit constituted a permitted payment under section 7(3) of schedule 1 to the Act. This says that a payment is a permitted payment if it is payment to a letting agent in consideration of arranging the termination of a tenancy at the tenants' request –

   a. In the case of a fixed term tenancy before the end of the term or
   b. In the case of a periodic tenancy without the tenant giving the period of notice required under the Tenancy Agreement by virtue of any rule of law.

   It is said that the sum of £180 was coincidentally the same as one week's rent. A copy of the Deed of Surrender and an invoice for the production of same was produced. It is noted that the Deed has not been signed by Mr Borufka. It is said by the Applicant that the cost of the preparation of the deed was reasonable and was proportionate and therefore did not breach paragraph 7(4) of the schedule.

10. It is said in the statement that the Deed was required because of Mr Borufka's expressed wish to give up possession of the Property earlier than the time of the expiry of the notice period and the fixed term. It was for that reason that a deed of surrender was prepared to ensure clarity and that despite Mr Borufka not having a strict legal interest in the Property it was to ensure that he could not thereafter claim he had been evicted. The Deed was prepared as it also assisted the Applicant in being able to be sure that they could sub-let the Property.

11. The statement goes on to say that Mr Borufka was fully aware of the terms of the Deed although he had not signed it. He made no complaint or objection to the terms to the Applicant. The reason the Applicant says they prepared the Deed was because of the varying dates that Mr Borufka indicated he wished to leave. It is said that he had firstly intended to leave on Monday 24th February but in fact moved out a week earlier, although retaining the keys and returning to the Property on 21st February to complete the official check out and cleaning. It seems that Miss Van Orden, the Applicant's agent, was eager to let the room immediately as there was a potential tenant interested in moving in, possibly on 22nd or 23rd February.

12. It appears that Miss Van Orden decided that the Deed would bring a certainty to all parties, and it is said that Oak Legal were instructed to prepare the Deed some time before 21st February 2020. The Deed was collected by a Mr Walker, who is a consultant for the Applicant, who then took it to the Property where it was executed by Miss Wilson and left in Mr Borufka's room with a note advising him that he needed to sign it and leave it for collection. It is said that thereafter it was

discovered that Mr Borufka had failed to sign the document either intentionally or because he had failed to see it lying on the bookcase in a 'conspicuous' position in his room.

13. It is said later that the deduction of £180 against Mr Borufka's deposit both under the provisions of section 6 of his licence agreement and the email of Miss Wilson dated 28th February 2020 were irrelevant and misleading given that this deduction was alleged to comprise *"a simple and entirely straightforward cost for external legal work carried out which could have been paid for directly by Mr Borufka and for which an invoice was presented but was latterly paid by the Applicant but reimbursed directly from the Tenant's deposit."* The statement then dealt briefly with the company's financial position and the arrangements for the payment of rent monies. It is said that the Applicant has *"an excellent track record of letting and managing properties and has not been successfully prosecuted or received a penalty under the Housing and Planning Act 2016 or section 249A of the Housing Act 2004."*

14. Finally, the statement goes on to address the Housing and Planning Act 2016 guidance for local housing authorities and stated that the offence is not serious, but the Applicant has an excellent track record, that no time was prejudice or harm caused to the occupier or the public and that given the lack of severity and no existing pattern of previous offending the offence should not be deemed to merit a significant sanction. It is said that £3,000 is grossly excessive and totally disproportionate to the circumstances.

15. At the hearing Mr Walker speaking on behalf of the Applicant indicated that he was of the view that the Applicant had made a lawful deduction for the Deed of Surrender. The fact that the sum claimed was the equivalent of one week's rent was not relevant and this appeared to be the only basis upon which the Council had proceeded with the claim. Indeed, he suggested that the sum of £3,000 for a minor offence may be a method of enrichment for the Council.

16. Mr Grasso gave evidence consistent to the statement of case. He told us that the assistant Emily Wilson was the person sending the emails and papers, as he was frequently in Italy caring for elderly and frail parents. His view was that Emily Wilson had made a mistake in issuing the licence including the administration fee after the Tenant Act came into existence. He sought to distance himself from an email sent by Miss Wilson on behalf of Top Holdings dated 28th February 2020 which said as follows:

"Dear Gabriel
Here is the recap.
We hold £540 as your deposit where we applied the following deductions: - £180 as one week payment of the licence feed from 24th to 31st to comply with one month's notice period agreed in clause 5 of the licence as you mentioned in your previous email.
£180 as one week's admin fee as agreed at clause 6 of the licence.
Therefore £180 will return to you today.
Thank for all and kind regards
Emily"

By an earlier email Mr Borufka confirming his wish to vacate had said that he would give notice with effect from 24th February but was happy to cover one more week to take that to the end of February and thus give one month's notice. This emanated from an email of 31st January 2020, which was included within the papers before us.

17. Mr Grasso said that the deduction was not made in accordance with that set out in Emily Wilson's email but because of a Deed of Surrender was required as Mr Borufka was not clear when he was leaving but that it was prior to the end of the tenancy. The Deed was required because Miss Van Orden wished to re-let the Property possibly on 21st or 22nd February and Mr Borufka was still in situ and plans could not be made to deal with potential tenants.

18. It was alleged that the Deed had been left in Mr Borufka's room for him to sign when he returned, it being accepted, it seems, that he had the right to come back to the room until the end of February, which Mr Grasso felt would not be the case and hence the need for the deed.

19. Asked by Mr Walker whether Mr Borufka had made any representations when the money was deducted, he said he had not. An email had been sent by Miss Wilson which is referred above for which there had been no feedback. He was curious as to why Mr Borufka had not challenged the matter and was concerned that this may have been a contrived complaint motivated by the local authority.

20. Mr Walker fulfilled not only the role of advocate but also a statement was made by him concerning the delivery of the Deed of Surrender. The witness statement was at page 35 of the Applicant's bundle. We have noted the contents. Mr Walker confirms that he had acted as an external consultant at various times assisting in the administrative and statutory compliance of the company, Top Holdings, particularly when Mr Grasso was overseas visiting his parents. He says that on 21st February he was called by Miss Van Orden and asked to visit the offices of Oak Legal to obtain the Deed and take it to the Property. He told us that he visited 52 Berkeley Square, which was the offices of Oak Legal Consultancy. There was no buzzer for the firm, but he was admitted to reception where on entering he found an A4-sized envelope which he collected. It seems that he went for lunch although this is not mentioned in his witness statement but came out at the hearing. Subsequently, he went to the Property where he met with Miss Wilson, who he knew to be the Office Manager, who asked to check the Deed and proceeded to sign it and have her signature witnessed by a Mr Webber who Mr Walker did not know. By now it was about 4.30pm and he apparently asked Miss Wilson if she was going to ask Mr Borufka to sign the Deed but there was confusion as to his whereabouts and it was decided to leave the Deed in Mr Borufka's room with a note requesting him to read it, sign it and leave it in the room. That appeared to be the extent of Mr Walker's involvement.

21. Mr Grasso was then asked questions by Counsel for the local authority. It appears that he was not present at any of the events which have been outlined above but spoke only by telephone. It seems that the creation of the Deed was left to Miss Van Orden to deal with although he was aware of the existence of Oak Legal. He himself, however, did not instruct Oak Legal to prepare the deed. It does seem, however, that he had used a form of deed of surrender several times

and had used other companies to prepare a deed on different occasions. Asked why a template had not been used, he said he was not sure that Miss Van Orden had ever prepared such a deed and perhaps it could have been prepared by Miss Wilson, but it had not been done in the rush to get matters resolved. It appears that the Applicant was eager to get the room rented right away and that is why the deed was produced.

22. On the role of Miss Wilson, he said that she was involved in seeing tenants, dealing with the cleaning and other matters relating to the Property but that she was not the "brightest star." Asked why the Deed was necessary, he said that it was relevant so they knew when they could rent. There were some discussions on the role of Miss Van Orden. Mr Grasso confirmed that he authorised payments out of deposits although sometimes that could have been done by Miss Van Orden or Miss Wilson. It was drawn to his attention the person releasing the deposit, Miss Wilson, makes no mention of a Deed of Surrender but his view was this email was perhaps a 'copy and paste' document and that she had done this without thinking about the content. Apparently, Miss Wilson does not work for the Applicants any further so could not give evidence. Asked why he had not requested Oak Legal to back up Top Holdings' version of events, he said he just forwarded the letter to them from the Council but did not ask for support instead relying on the invoice they had produced. It was put to him that the Deed of Surrender had in fact been drafted after 21st February in response to the fixed penalty but this he disagreed with. It was also put to him that the invoice was fabricated and/or related to other work which again he disagreed.

23. Within the Applicant's bundle there were a number of documents, which we had the opportunity of considering. This included a number of emails between Top Holdings and Mr Borufka, the Oak Legal consultancy invoice which was at page 32 of the bundle and is addressed to Miss Van Orden dated 17th February 2020 and said to be for the preparation of deed of surrender in the sum of £180. The Oak Legal consultancy address is shown as Monaco although at the top of the fee note the 52 Berkley Square address is shown. No reference to any property is made in the deed. We also had available to us an email from Miss Wilson of 21st February setting out the cleaning standards and what was required and finally that the deposit would be returned within ten working days of vacating the room in accordance with the licence to occupy at clause 6.

24. In addition to the above, we were provided with a copy of the Deed said to be dated 21st February 2020 between Top Holdings and Mr Borufka. The Deed refers to the notice to determine the licence given on 31st January 2020 said to be a breach of clause 5 of the licence agreement and that Mr Borufka expressed a wish to give up vacant possession on 21st February but paid the licence fee to the end of that month. The Deed is said to extinguish the terms and interest of the licence by accepting that it be terminated on 21st February 2020. The Deed also goes on to say that the costs of the preparation of same would be deducted under the provision of section 7(3) of schedule 1 of the Act. The document is not signed by Mr Borufka. It also included within the bundle the grounds of appeal, which echoed the Applicant's statement of case.

25. In addition to the documents, we were provided very late in the day with a statement by Mr Grasso which sought to exhibit some WhatsApp correspondence

between himself and Mr Borufka seeking to determine the date upon which Mr Borufka would be leaving. Reference is made to exchange of emails which apparently on 21st February emanated from Mr Borufka saying that he would be retaining the keys until tomorrow as he wanted to wash the mattress cover and sofa cover and that photographs were left as to the condition of the room. It appears that he did vacate on 22nd February. The grounds of appeal go on to deal with the emails produced by Miss Wilson, which are referred to above. Much in the grounds is made of the involvement of Oak Legal and the attempts made by the Council to contact them, all of which have been noted by us.

26. The Respondent issued its own bundle which contained a response to the matters raised giving a brief run-down of the Act and responding to the Appellant's grounds of appeal. We have noted all that has been said. For the Council it was argued that there was no reason for the Deed of Surrender in respect of a licence to occupy. Mr Borufka's licence ended on 15th January 2020 and therefore the fixed term had passed. Clause 5 of the licence said the licensor could remain on a month basis but that a notice period of one month still applied. It is said that the one month's notice was given on 31st January 2020 and that he paid rent until the end of February 2020. Accordingly, the licence to occupy was ended by mutual agreement. No deed of surrender is mentioned in the licence to occupy. It is interesting, however, that the Applicant did not appear to produce the occupation licence, but which came from the Respondent.

27. In the papers we had a statement from Mr Borufka who told us that he found the room in the first half of August 2019 and had spoken to somebody introducing himself as Francesco. He liked the room and discussed taking the Property on. He apparently met Mr Grasso on 24th August 2019 where he paid the first month's rent and a deposit and signed a licence to occupy a room as a holiday let, which he produced. He told us on 31st January he sent an email to the Respondents regarding notice and that he wished to give such notice with effect from 24th February 2020 but would be happy to cover a further week's rent to the end of that month. It seems that on 17th February he moved out but by 21st February he had not been given information about the deposit return or vacating the room. Subsequently he received an email from Emily Wilson on 21st February confirming what he was required to do on leaving and requesting by another email details of his bank account. He then received the email referred to previously dated 28th February in which an explanation is given by Miss Wilson as to the monies deducted from the £540 held. He only received the return of £180 from his original deposit.

28. Subsequently he contacted the Council it seems on 12th March making them aware that he had not received all of his deposit back. It appears the Council did not progress the matter until sometime in September and it was in November that he had first sight of the Deed of surrender.

29. Asked by Counsel why he has not asked about the deduction he said he did not do so because he had had problems whilst staying the Property, in particular a police raid. In a second witness statement dated 8th September 2021 he expanded slightly on the arrangements made for him to move out and that he had indeed vacated around midday on 22nd February after he had had the opportunity to wash and dry the bed sheets and sofa cover. He denied any Deed was left for him

to sign and took photographs of the room on 22nd February, which were produced.

30. We also heard from Ms Schopen who had made a statement, which was at page A41 onwards in the first bundle and a second statement made dated 7th September 2021 at pages A5 onwards. This latest statement appeared to deal largely with the involvement of Oak Legal Services. Her statements were taken as evidence in chief and she was asked by Mr Walker about the involvement of Oak and the time that she had spent on making enquiries into their existence. Asked how she had become involved with Mr Borufka she said that he had been passed to her following a police raid by the Private Housing Team. It was he who had contacted her, and she indicated that if there were problems concerning his occupancy, she should see her. Advice was given and also if there were further information or assistance needed, she informed Mr Borufka that he could re-contact her. There was no real explanation given as to why Mr Borufka had not just gone back to the Applicant to ask for a refund of the money but as he had told us earlier, he felt uncomfortable following the police raid. It was put to her by Mr Walker that this was nothing more than a witch-hunt against Mr Grasso and Top Holdings. Ms Schopen confirmed that she was aware of some history with the private housing team and issues going back to 2014. Asked why there had been a delay in progressing matters she said that during the Covid problems the Trading Standards team had been involved in enforcing Covid regulations and assisting in that regard and this had put her behind dealing with other matters.

31. Closing submissions were made by Mr Gordon-Saker on behalf of the Council. He said there were essentially three matters that needed to be considered and reminded us that this was a re-hearing. It was suggested that although the document referred to in the papers as a licence was in fact not such a document but a lease giving an exclusive right to rent the room. It was Mr Gordon-Saker's view that the key piece of evidence was the email from Miss Wilson authorising return of the deposit and making the reduction with no evidence of any form Deed of surrender being required. It was his submission that the Deed was a subsequent fiction. There was no record of Oak Legal and the correspondence with them did not assist. It did not confirm that they prepared the Deed. There was no contemporaneous emails concerning the Deed and if the occupancy was a licence then there would be no need for such a Deed. It was in any event not a reasonable expense. It was he said full compliance with the act by the Council and that the level of penalty was appropriate.

32. Mr Walker's response was to remind us that the matter had to be proved to a criminal standard. If the local authority had sought contemporaneous information that could have been available to them, and this matter could have been avoided. He questioned again why Mr Borufka had complained directly to the Applicants and was of the view that this was a further attack on an innocent company. His view was that the bottom line was that the Applicant had made a lawful deduction and that in effect there was no case to answer.

THE LAW

33. The Tenant Fees Act 2019 came into force on 1st June 2019. It places a prohibition on landlords and letting agents from charging most payments

associated with a tenancy other than rent and authorised deposits. Tenant includes licensees. The Act sets out definitions of prohibited and permitted payments and schedule 1 to the Act sets out what are the permitted payments which includes the rent, a tenancy deposit, a holding deposit and payments in event of default. There is also payments in respect of variation, assignment or novation of a tenancy, payment on termination of a tenancy and payments in respect of Council tax, utilities, television licence and communications.

34. In this case the Applicants seek to rely on schedule 1 paragraph 7(3). Section 7(1) sets out the basis upon which a payment is permitted. If it is a payment to a landlord in consideration of the termination of a tenancy at the tenant's request (a) in the case of a fixed term tenancy and before the end of a term or (b) in the case of a periodic tenancy without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law. At paragraph 7(3) payment is permitted to a letting agent in consideration of arranging the termination of a tenancy in the circumstances outlined at paragraph 7(1) above.

FINDINGS

35. The licence to occupy is included in the Respondent's bundle at page A76 onwards. It is headed Licence to Occupy a Room as a Holiday Let. The introductory wording says: *"This licence provides for the letting of the Property for the sole purpose of a holiday under section 9 of schedule 1 of the Housing Act 1988 and is an excluded tenancy, such that no landlord tenant relationship is created and where the licensee does not occupy the Property as his main, sole or primary residence."* The evidence before us was that Mr Borufka did occupy the Property as his main residence and lived there from 24th August, which is the date of the agreement, until he vacated at the end of February the following year.

36. Within the bundle there are two copies of the licence agreement. The one which is produced by the Council at page A19 appears to be the one under which Mr Borufka occupied and is dated 24th August 2019 and is signed by him and by Mr Grasso. This makes no mention of the Act but the second agreement that has been produced does. It is, however, in our finding this first agreement that we must consider as this bears the signature of the parties. This includes in clause 6 the following wording: *"When the guest licensee will vacate the room at the end of the licence a charge of one week's rent will be deducted from the deposit for general administration charges related to the application including check in and check out inventory, background checking, marketing of the room, drafting of the contract, rent collection etc."* This is the basis upon which it was said by Miss Wilson the £180 was deducted from the deposit. The licence agreement appears to make no mention of any deed of surrender. It says that one month's notice, preferably longer, should be given. The agreement goes on to say that the licence will expire on 15th January 2020, however the 'guest licensee' can agree with the licensor to remain on a month to month basis. It appears that in giving the letter on 31st January 2020, Mr Borufka sought an extension for a further month and indeed paid the money to the end of that period. We have noted also the provisions and declarations clause making it clear that from the landlord's point of view it was the intention that this licence was for a holiday and that the agreement was excluded from the Protection of Eviction Act 1977 but conferred no security of tenure under the Housing Acts 1988 and 2004.

37. It is clear that the email by Miss Wilson intended for the one month's rent to be charged in respect of the general administration relating to the check in and check out etc as stated above. It is accepted that Mr Borufka had paid an additional one week's rent.

38. Our finding is that despite that which is been urged upon us by the Applicants, the email sent on 28the February 2020, clearly indicated that this £180 was being deducted for matters which were not permitted. Subsequently it would appear that some form of deed of surrender was created. If this is a holiday licence, as stated by the applicant, then we cannot see that a deed of surrender would have been necessary and the costs associated with same should not be recoverable from the tenant, in any event. Mr Borufka had given a month's notice at the end of January expiring at the end of February and had paid the rent to that period. What early termination is envisaged by the Applicant? In those circumstances we do not understand the Applicant's desire to create the Deed to enable then to sublet the Property at an earlier time when they had already received rent to cover to the end of February. It seems to us this is something of a fiction. The Deed of Surrender we find was not seen by Mr Borufka. It is not signed by him. Much is made of Mr Walker attending the offices of Oak Legal to collect the deed and subsequently after lunch attending the subject property for the Deed to be executed. It is fair to say that this would be something of an elaborate ruse just to protect the sum of £180. Nonetheless we are concerned that this is something of a fiction created to cover the email sent by Miss Wilson in February in which she clearly states the deposit is being retained in respect of a prohibited matter.

39. We are somewhat surprised that Mr Borufka did not approach the Applicants direct in the period from March, when he contacted the Council, to the time when they appeared to be taking up the cudgels on his behalf which was some six months later and see whether they would refund the deposit to him. He has not got that money back.

40. Whether there was a 'desire' on the part of the local authority to pursue the applicant as alleged by Mr Walker, we cannot say. However, the local authority has been able to prove to us that an offence has been committed under the Act and that the council had properly applied their policy in this case. We are satisfied that the civil penalty imposed is reasonable and is payable. The Act is designed to stop this behaviour by landlords and letting agent and the penalty must be of sufficient severity to discourage people in the position of the applicant from unlawfully deducting money from deposits that they hold. We make no comment as to the lawfulness of the licence to occupy given Mr Borufka's evidence that he lived at the Property as his sole residence but that is not a matter that is before us today.

Judge: Andrew Dutton

A A Dutton

Date: 22 November 2021

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office, which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.