



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

**Case reference** : LON/00AW/HTC/2020/0021

**HMCTS Code** : P: Paper remote

**Property** : 142 Portland Road, W11 4LU

**Applicant** : Mr German Ferriol

**Respondent** : Mr John Derakhshan

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

**Tribunal member** : Tribunal Judge I Mohabir

**Date of determination** : 23 April 2021

**Date of decision** : 23 April 2021

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

### ***Introduction***

1. This is an application for an order for the recovery of a prohibited payment/holding deposit paid in respect of a prospective tenancy of 142 Portland Road, W11 4LU, pursuant to section 15 of the Tenant Fees Act 2019 (“the Act”).
2. The application form and supporting documents appear to confirm that on or about 25 September 2020 the Respondent received payment of £600 from or on behalf of the applicant, but that, despite requests, the Respondent has not repaid that amount.
3. The payment appears to be a prohibited payment/holding deposit within the meaning of the Tenant Fees Act 2019. If so, the Tribunal would be empowered to order recovery of all or part of that amount from the respondent.
4. The issue to determine whether the Tribunal should make an order under section 15 of the Act for the respondent to pay all or any part of the amount to the applicant.
5. On 26 January 2021, the Tribunal issued directions to the parties. Only the Applicant has complied with the directions and the Respondent has not engaged at all in these proceedings. As a consequence, the Tribunal made an order on 9 March 2021 that unless the Respondent complied with the Tribunal’s directions order, he would be debarred from defending this application.
6. The Respondent has failed to comply with the unless order and is, therefore, debarred from defending the application. This proceeds on the basis of the evidence filed by the Applicant.

### ***Relevant Law***

7. This is set out in the Appendix annexed hereto.

### ***Decision***

8. The determination of the application took place on 23 April 2021 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant.

9. Under the terms of the Act, landlords and letting agents must not require tenants (including prospective tenants and guarantors) to make any prohibited payments. In short, a payment is a "prohibited payment" unless it is a permitted payment as listed in Schedule 1 of the Act below.
10. A landlord may seek a holding deposit from a prospective tenant to reserve a property, however, such holding deposit must be repaid within 7 days of the landlord and tenant either:
  - (a) Entering into a tenancy agreement,
  - (b) The landlord decides not to enter into a tenancy agreement; or
  - (c) The landlord and tenant fail to enter into a tenancy agreement by the deadline.
11. The Act provides that the deadline for the landlord and prospective tenant to enter into a tenancy agreement is 15 days and where this does not happen the landlord will have to repay the holding deposit to the prospective tenant within 7 days. The Act does, however, permit a landlord and prospective tenant to agree in writing a different deadline rather than 15 days.
12. A landlord can only retain a tenant's holding deposit if they provide false or misleading information which reasonably affects the decision to let the property to them, they fail a right to rent check, withdraw from the proposed agreement or fail to take all reasonable steps to enter an agreement when the landlord and/or agent has done so.
13. On the basis of the evidence provided by the Applicant, the Tribunal made the following findings of fact:
  - (a) that the Applicant paid a holding deposit to the Respondent on or about 25 September 2020 for the rental of a room in the subject property in the sum of £600.
  - (b) that the payment of £600 represented one month's rent in breach of paragraph 3(3) in Schedule 1 below of the Act.
  - (c) that the Respondent failed to grant the Applicant a tenancy of the premises on 1 October 2020 as agreed.
  - (d) that the Respondent has failed to return the Applicant's holding deposit of £600 within 15 days of the payment made by the Applicant.
14. Therefore, the Tribunal was satisfied that the payment of £600 to the Respondent was a prohibited payment within the meaning of paragraph 3(3) in Schedule 1 to the Act.

15. Accordingly, the Tribunal made an order under section 15 (9) of the Act for the Respondent to refund the payment of £600 to the Applicant not less than 14 days from service of this decision on him.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 23 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).

## **Appendix of relevant legislation**

### SCHEDULE 1 Permitted payments

#### Holding deposit

3(1) Subject to sub-paragraphs (3) to (6), a payment of a holding deposit is a permitted payment.

(2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).

(3) If the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment.

(4) In sub-paragraph (3) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

(5) A payment of a holding deposit is not a permitted payment if—

(a) the landlord or letting agent to whom the deposit was paid has previously received a holding deposit (“the earlier deposit”) in relation to the same housing,

(b) the landlord or letting agent has not repaid all or part of the earlier deposit, and

(c) none of paragraphs 6 to 12 of Schedule 2 have applied so as to permit the landlord or letting agent not to repay the earlier deposit or the part that has not been repaid.

(6) The reference in sub-paragraph (5)(a) to a landlord or letting agent receiving a holding deposit does not include the landlord or letting agent doing so before the coming into force of Schedule 2.

#### 15. Recovery by relevant person of amount paid

(1) Subsection (3) applies where—

(a) a landlord or a letting agent breaches section 1 or 2, as a result of which the landlord or letting agent, or a third party, receives a prohibited payment from a relevant person, and

(b) all or part of the prohibited payment has not been repaid to the relevant person.

- (2) Subsection (3) also applies where—
- (a) a landlord or letting agent breaches Schedule 2 in relation to a holding deposit paid by a relevant person, and
  - (b) all or part of the holding deposit has not been repaid to the relevant person.
- (3) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of—
- (a) if none of the prohibited payment or holding deposit has been repaid to the relevant person, the amount of the prohibited payment or holding deposit;
  - (b) if part of the prohibited payment or holding deposit has been repaid to the relevant person, the remaining part of the prohibited payment or holding deposit.
- (4) Subsection (5) applies where—
- (a) a landlord or letting agent breaches section 1 or 2, as a result of which a relevant person enters into a contract with a third party, and
  - (b) the relevant person has made a payment or payments under the contract.
- (5) The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord or letting agent of the amount of the payment or (as the case may be) the aggregate amount of the payments that the relevant person has made.
- (6) Subsection (3) does not apply in relation to a prohibited payment or holding deposit if or to the extent that, with the consent of the relevant person—
- (a) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards a payment of rent under the tenancy, or
  - (b) the prohibited payment or holding deposit, or the remaining part of it, has been applied towards the tenancy deposit in respect of the tenancy.
- (7) Subsection (3) or (5) does not apply where an enforcement authority has commenced criminal proceedings against the landlord or the letting agent for the same breach.
- (8) Subsection (3) or (5) does not apply where an enforcement authority has required the landlord or letting agent to pay to the relevant person all or part of the amount or (as the case may be) the aggregate amount referred to in that subsection.

(9) On an application under subsection (3) or (5), the First-tier Tribunal may order the landlord or the letting agent to pay all or any part of the amount or (as the case may be) the aggregate amount referred to in that subsection to the relevant person within the period specified in the order.

(10) A period specified under subsection (9) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the order is made.

(11) An order of the First-tier Tribunal under this section is enforceable by order of the county court as if the amount payable under the order were payable under an order of that court.