



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

Case reference : LON/ooAW/HTC/2021/0019

HMCTS code (paper, video, audio) : P:PAPERREMOTE.

Property : 42 Clanricarde Gardens, London W2 4JW.

Applicant : Ms. Lotta Rantanen.
Ms. Eda Saaid.

Representative : In person.

Respondent : Mr. Nicholas Nash.
Ms. Judith Mary Murray Nash.

Representative : In person.

Type of application : A determination under S.15(3)(9) of the Tenant Fees Act 2019 in relation to a prohibited payment.

Tribunal Judge : Aileen Hamilton-Farey

Venue : Remote.

Date of decision : 16 February 2022.

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers, which has been consented to by the parties. The form of remote determination was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on the papers. The documents that I was referred to are in a bundle the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

1. I decline to order the repayment of £285.00 + £80.00 (£365.00) to the tenants.

Background:

2. The Applicant tenants seek an order under Section 15(3) of the Tenant Fees Act 2019 (“the Act”) for the recovery of a prohibited payment in the sum of £365.00 made up of £285.00 cleaning fees and £80 membership fee.

The tenancy:

1. By an agreement dated 25 July 2020 the tenants entered into an assured shorthold tenancy agreement for a period of 52 weeks from that date until 23 July 2021.
2. The rent payable under the tenancy was £530.00 per week, payable six monthly at a rate of £13,780.00 each six months. The tenants also paid a deposit of £2650.00. There is no dispute that the deposit was a permitted payment under the Act.
3. The tenancy agreement included a provision at Clause 11.8 as follows:

The tenant must clean the Property and the Contents using Professional Cleaners nominated by the Landlord to the same professional standard as they were cleaned prior to the commencement of the Tenancy so that they are as clean as they were at the commencement of the Tenancy. Including washing and cleaning (and where appropriate, ironing and pressing) of all linen, bedding, blankets, curtains, blinds, carpets, soft furnishings and like items, and cleaning or having cleaned both internally and externally all reasonably accessible windows of the Property.

4. At the end of the tenancy the tenants say that they were unable to get into contact with the landlord’s cleaners and therefore had the property

professionally cleaned themselves at a cost of £285.00 (+ £80.00 ‘membership fee’). It appears that some of the cleaning was deficient and £586.41 was deducted from their deposit for some damage, missing items, and for further cleaning. No evidence has been supplied to support this assertion (for example the report from the deposit scheme) and I am unable to make any determination in relation to that sum. The tenants therefore appear to seek to recover the £285.00 + £80.00 paid to Fantastic Services.

5. Directions were issued by the tribunal on 7 December 2021, and these required the parties to provide a statement of case and copies of any documents on which they wished to rely.
6. Both parties supplied a statement of case and supporting documentation, including the tenancy agreement, check-in report and correspondence between the parties.
7. The landlord responded to the application to say that frequently at the end of a tenancy, tenants do not supervise the cleaning (because they have moved elsewhere) with the consequence that further cleaning is often required. To minimise further cleaning costs the landlord includes with the tenancy agreement Clause 11.8 that requires the tenant to have cleaning carried out by the landlords’ nominated contractor, and this is done to assist the tenants with the return of their deposit.
8. The landlord also said that at the time the tenancy was granted they were unaware of the Act (as were the tenants) and it was not until towards the end of the tenancy that they became aware that to require a tenant to use a specific company was not permitted under the Act. The landlord says therefore that Clause 11.8 was not implemented, and the tenants were free to either clean the property themselves or hire a contractor, provided the property was returned having been cleaned to a professional standard.
9. In her email of 10 July one of the tenants (Ms. Saaid) confirmed to the landlord that she knew the obligation to have the property cleaned to a professional standard at the end of the tenancy and asked the landlord if there was a preferred company to do this.
10. The landlord responded the same day to say that there wasn’t a specified cleaner, but made a recommendation, and also said that it was important that the cleaner was known and not just someone found from the internet.
11. Ms. Saaid then confirmed on 22 July that she had contacted the recommended cleaning company, but they were unable to assist and had therefore found another company to do the work. She said that she

would give her keys to the agents (Douglas and Gordon) so that they could provide access to the cleaner. It appears that matters changed and on 26 July Eda confirmed to the landlord that Fantastic Services had been contracted to carry out the clean, that she would be in attendance and would arrange for the keys to be given to the check-out clerk.

Determination:

12. The issue for the Tribunal is whether the payment by the tenant of the cleaning costs was a prohibited payment under S.1 of the 2019 Act.
13. In the correspondence the tenants accepted that they had to return the property to the same condition as at the start of the tenancy. I accept the landlord's assertion that the term 'cleaned to a professional standard' does not mean that a third-party company has to be employed, and the tenants could have cleaned the property themselves, provided they could have done so to the required standard.
14. Ms. Rantanen suggests in her statement and reply that the tenants, could have cleaned to that standard, but there is no evidence to support this statement. Ms. Saaid clearly recognised their contractual obligations, but at no time did she, or Ms. Rantanen suggest they would be able to clean the flat themselves. I am not persuaded by the evidence that they were either willing or able to do so.
15. The tenants finally say that because they are not English it was unfair to expect them to understand the legislation and contractual requirements. However, in my view, I am satisfied that Ms. Saaid at least was aware that she could choose a cleaning contractor, that the landlord suggested one who had been recommended to them, and also suggested that she contact the agents for advice. It is not clear whether she did the latter, but she was not able to contact the company recommended by the landlord. In the end, Ms. Saaid chose a different contractor and knew that they were not bound by the tenancy agreement.
16. As there was no requirement for the tenants to use a nominated contractor the sum paid to Fantastic Services was not a prohibited payment, under S.1 and therefore there is no entitlement to have the sum repaid to them by the landlord. In addition, the £80.00 membership fee is presumably a fee they paid to join a 'club' operated by Fantastic and nothing to do with the landlord.
17. I do however criticise the landlord and the agents for not explicitly informing the tenants that Clause 11.8 had been modified. The landlord was represented by agents Douglas and Gordon who should have been aware of the implications of the Act as they had been well-publicised

and therefore should have amended their tenancy agreement and advised the landlord that Clause 11.8 was not permitted under the Act. In my view if they had done so, this dispute may not have arisen.

The Law:

18. Under S.1(1) of the Act a landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England. Under section 3(1) a payment is prohibited unless it is a permitted payment by virtue of Schedule 1 to the Act. See Appendix 1.
19. The payment of a tenancy deposit is a permitted payment but if the amount of the deposit exceeds five weeks rent where the annual rent in respect of the tenancy immediately after its grant is less than \$50,000, the amount of the excess is a prohibited payment.
20. The Act applies to relevant persons which means a tenant (S.1(9)(a)) or subject to subsection (10) a person acting on behalf of, or who has guaranteed the payment of rent by a tenant (S.1(9)(b)). The reference in S.1(9)(b) to a person does not include a local housing authority within the meaning of the Housing Act 1985.

Name: Aileen Hamilton-Farey

Date: 16 February 2022.

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 1: Relevant Sections of Tenant Fees Act 2019.

S1. Prohibitions applying to Landlords:

1. A landlord must not require a relevant person to make a prohibited payment to the landlord in connection with a tenancy of housing in England.
2. A landlord must not require a relevant person to make a prohibited payment to a third party in connection with a tenancy of housing in England.
3. A landlord must not require a relevant person to enter into a contract with a third party in connection with a tenancy of housing in England if that contract is –
 - (i) A contract for the provision of a service, or
 - (ii) A contract of insurance.
4. Subsection (3) does not apply if the contract is for –
 - (i) The provision of a utility to the tenant, or
 - (ii) The provision of a communication service to the tenant.
5. A landlord must not require a relevant person to make a loan to any person in connection with a tenancy of housing in England.
6. For the purposes of this section, a landlord require a relevant person to make a payment, enter into a contract or make a loan in connection with a tenancy of housing in England if and only if the landlord –
 - (i) Requires the person to do any of those things in consideration of the grant, renewal, continuance, variation, assignment, novation, or termination of such a tenancy.
 - (ii) Requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things in the event of an act or default of a relevant person,
 - (iii) Requires the person to do any of those things pursuant to a provision of a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things if the tenancy is varied, assigned, novated, or terminated.
 - (iv) Enters into a tenancy agreement relating to such a tenancy which requires or purports to require the person to do any of those things other than in the circumstances mentioned in paragraph (b) or (c),
 - (v) Requires the person to do any of those things –
 - (vi) as a result of an act or default of a relevant person relating to such a tenancy or housing let under it, and
 - (vii) otherwise, than pursuant to, or for the breach of, a provision of a tenancy agreement, or
 - (viii) requires the person to do any of those things in consideration of providing a reference in relation to that person in connection with the person's occupation of housing in England.