



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

Case reference : **LON/00AZ/HTC/2021/0025P**

Property : **18 Camplin Street, London SE14
5QY**

Applicant : **Joel Dunning**

Representative : **Rosemary Dunning (Applicant's
mother)**

Respondent : **Antoinette Tamakloe**

Representative : **Not represented**

Type of application : **Recovery of prohibited payment
under Tenants Fees Act 2019**

Tribunal members : **Judge P Korn
Mr K Ridgeway MRICS**

Date of decision : **5 August 2022**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that he would be content with a paper determination, the Respondent did not object and the tribunal agrees that it is appropriate to determine the issues on the papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal orders the Respondent to pay to the Applicant the sum of £600.08 within 7 days from the day after the date of this order.

The application

1. This is an application under sections 15(3) of the Tenant Fees Act 2019 (“**the 2019 Act**”) for the repayment of a prohibited payment.

Applicant’s case

2. On 17 August 2021 the Applicant entered into a written Lodger Agreement (“**the Agreement**”) with the Respondent for a fixed term of 6 months beginning on 27 August 2021. There was a break clause in the Agreement which provided that “*by mutual consent either party may at any time end this agreement earlier than the term by giving 1 month’s notice*”. The Respondent also added a verbal condition that there be a minimum term of 3 months.
3. The Applicant sent one month's written notice of early termination, expressing a wish to end the tenancy and move out on 26 November 2021, meeting the minimum 3 months condition. The Respondent sent an email back agreeing to this termination date and began advertising the room and conducting viewings shortly after.
4. On 8 November 2021 the Respondent wrote to the Applicant to advise him that his room would no longer be available until 26 November 2021 as previously agreed and asked him to move out on 21 November 2021. He agreed to this request on condition that the Respondent would repay the overpaid rent for the 5 days (21-26 November). He also asked her to confirm that she would be available to carry out the check-out inspection so they could agree the amount and procedure for the return of his deposit.
5. The Respondent could not confirm that she would be available for the check-out but agreed that the Applicant would receive back his deposit of £600 within 7 days after 21 November 2021 provided that there was no damage to the room. She also stated that any overpaid rent would be returned to him and that he would be sent an invoice for costs incurred for advertising and servicing a new lodger agreement.
6. The Applicant then decided to move out early, and he returned the keys to the Respondent on 13 November 2021 as he felt uncomfortable staying there any longer. He always paid his rent each month and was not in arrears. The Respondent wrote back to thank the Applicant for his co-operation, and she confirmed that his deposit and overpaid rent

would be paid into his account, most likely on 22 November 2021. She also stated again that she would be sending an invoice.

7. On 26 November 2021, after being chased by the Applicant, the Respondent paid £79.04 into the Applicant's bank account and sent him an invoice. The invoice showed charges of £600.08 that the Respondent described as a 'Short term let adjustment'. The Applicant submits that it was effectively a retroactive rent increase, changing the rent from £600 to £800 per month for the 3 months between 27 August - 26 November. There is no rent review clause in the Agreement, no notice of the increase was given and there was no agreement with the Applicant for the rent to be increased in this way.
8. The charge of £600.08 was deducted, without consent, from the Applicant's deposit of £600 and from the overpaid rent. It is also stated in a note on the invoice that the £600.08 fee additionally covered the cost of re-advertising plus 30 hours of the Respondent's time spent on viewings, interviewing and administration.
9. The Applicant appreciates that an early termination fee can be a permitted payment under the 2019 Act, but his understanding is that it must not exceed the loss incurred by the landlord. He believes that a replacement tenant was found before the required notice period under the Agreement had expired, as the Respondent asked him to move out on 21 November 2021.
10. The Respondent has not lost any rent because of the Applicant's decision to leave. The Applicant has asked her for evidence to demonstrate any costs incurred in finding a replacement tenant, but nothing has been provided. The Applicant submits that the charge of £600.08 is not a reasonable cost and he believes it to be a prohibited payment. As regards the Respondent's statement that the charge includes costs for 30 hours of her time in setting up a new tenancy, his understanding is that this is simply a further basis for it to be a prohibited payment.
11. The Applicant has tried to persuade the Respondent to discuss this matter and to return the money owed to him, but she has refused to discuss the matter or co-operate in any way.

Lack of response from the Respondent

12. The Respondent has made no submissions whatsoever objecting to, or otherwise commenting on, the application.

The relevant legal provisions

13. Under section 1(1) of the 2019 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’*, and section 1(9) of the 2019 Act states that *‘In this Act “relevant person” means ... a tenant ...’*
14. Under section 3(1) of the 2019 Act, *‘For the purposes of this Act a payment is a prohibited payment unless it is a permitted payment by virtue of Schedule 1’*. Schedule 1 then duly lists all the permitted payments.
15. Under section 15(1) of the 2019 Act, *‘Subsection (3) applies where – (a) a landlord ... breaches section 1 ... as a result of which the landlord ... 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’*.
16. Under section 15(2), *‘Subsection (3) also applies where – (a) a landlord ... 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’*. Schedule 2 then duly sets out how a holding deposit must be treated.
17. Under section 15(3), *‘The relevant person may make an application to the First-tier Tribunal for the recovery from the landlord ... 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’*.
18. Under section 15(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’*.

Tribunal’s analysis

19. The Applicant has set out his position clearly and in full in his application. The Respondent has not engaged with these proceedings at all and has not sought to rebut any of the Applicant’s evidence or legal submissions.

20. On the basis of the evidence before us we are satisfied that at the relevant time the Applicant was a “relevant person” for the purposes of the 2019 Act. We are also satisfied that the entirety of the sum which is the subject-matter of this application, namely the sum of £600.08 was a prohibited payment for the purposes of the 2019 Act.
21. First of all, the evidence indicates that the Respondent failed to repay to the Applicant the overpaid rent in respect of the period when he had agreed to vacate early at her request in return for not being charged rent for that period. Secondly, the evidence indicates that there was no proper basis for the Respondent to hold on to the deposit. Thirdly, there is no evidence to indicate that the Respondent has any basis for relying on section 15(6) of the 2019 Act.
22. The Respondent has made no submissions and therefore there are no specific arguments before us as to whether any part of the sums which are the subject of this application could be permitted payments under Schedule 1 and/or whether the Respondent was entitled to withhold all or any part of the deposit under Schedule 2. In any event, having considered the contents of Schedules 1 and 2 in conjunction with the other relevant provisions of the 2019 Act, we are satisfied on the basis of the evidence before us that the £600.08 represents a combination of (a) a prohibited payment which has not been repaid to the relevant person (i.e. the Applicant) and (b) all or part of a holding deposit which has not been repaid to the relevant person (the Applicant) in circumstances where the landlord has breached Schedule 2 in relation to that holding deposit.
23. Accordingly, the whole of the sum of £600.08 must be paid by the Respondent to the Applicant.

Costs

24. There have been no cost applications, i.e. no separate cost applications on top of the application for repayment of a prohibited payment.

Name: Judge P Korn

Date: 5 August 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.