



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

Case Reference : **MAN/00CH/HTC/2020/0004 P**

Property : **9 Northbourne Street
Gateshead
Tyne and Wear
NE8 4AE**

Applicants : **Ms P Alexandrou
Ms P Theodosiou**

Respondent : **Fenix Property Sales & Lettings Ltd**

Type of Application : **For recovery of a holding deposit –
s15(3) of the Tenant Fees Act 2019**

Tribunal Member : **Judge J Holbrook**

Date of Decision : **22 February 2021**

ORDER

ORDER

On or before 5 March 2021, the Respondent must repay £103 to the Applicants, being the whole of the holding deposit paid by them in respect of 9 Northbourne Street, Gateshead.

REASONS

Tenant Fees Act 2019

1. A tenant of residential premises in England may lawfully be required to pay (in addition to rent) a refundable tenancy deposit and/or a refundable holding deposit. However, the Tenant Fees Act 2019 prohibits landlords and letting agents from requiring tenants to make many other payments in connection with a tenancy.
2. If a tenant has made a prohibited payment, the Tribunal may order the landlord or letting agent to repay it.
3. The Tenant Fees Act also deals with the treatment of holding deposits and the circumstances in which they must be repaid. Where appropriate, the Tribunal may order recovery of a holding deposit.

Holding deposits

4. A landlord or letting agent may require a person proposing to take a tenancy to pay a holding deposit before the tenancy is granted. This must not exceed one week's rent.
5. The general rule is that a holding deposit must be repaid within seven days if:
 - (a) the landlord and the tenant enter into a tenancy agreement,
 - (b) within 15 days of payment of the deposit, the landlord decides not to enter into a tenancy agreement, or
 - (c) the landlord and the tenant fail to enter into a tenancy agreement before the end of that 15-day period.
6. There are obviously exceptions to the duty to repay a holding deposit. For example, a holding deposit does not have to be repaid following the grant of a tenancy if the tenant has agreed to the deposit being applied towards the first payment of rent or towards the tenancy deposit. Nor is a holding deposit repayable if, within the 15-day period mentioned above, the prospective tenant either notifies the landlord or letting agent that they have decided not to enter into a tenancy agreement, or they fail to take reasonable steps to enter into a tenancy agreement.

Facts of this case

7. On 24 February 2020, the Applicants entered into a written 'Pre-tenancy & Holding Deposit Agreement' with the Respondent letting agent. The agreement concerned a property at 110 Joan Street, Gateshead, which the Applicants were hoping to rent on an assured shorthold tenancy for £450 per calendar month.
8. The Applicants paid a holding deposit of £103 to the Respondent under the agreement.
9. The Applicants subsequently decided not to rent the Joan Street property and risked losing their holding deposit as a result. However, they expressed an interest in renting an alternative property, at 9 Northbourne Street in Gateshead, on similar terms.
10. At 16:50 on Friday 28 February, a member of the Respondent's staff sent the following email to the Applicants:

"With regards to our conversation this afternoon, you have advised us you are wanting to bounce your holding deposit to 9 Northbourne Street. Can you please respond to this email that you are happy to proceed with this. Once I receive a response we will send out a revised receipt of(sic) the new costings on."
11. Ms Alexandrou replied by email seven minutes later. Her email said:

"Please accept this email as proof of our acceptance and please bounce our holding deposit to 9 Northbourne Street."
12. At 17.35 on the same day, Ms Theodosiou lodged a signed copy of a revised 'Pre-tenancy & Holding Deposit Agreement' using an electronic document signing service. However, the Respondent's office had closed for the day at 17:30.
13. Unfortunately, over the course of the weekend, the landlord of 9 Northbourne Street decided to let the property to somebody else and, on Monday 2 March, the Respondent informed the Applicants that they would not be able to rent it.
14. The holding deposit has not been repaid and, on 3 December 2020, the Applicants applied to the Tribunal for its recovery.

Discussion

15. I have determined this matter upon consideration of the application form and supporting documents together with the written representations provided by the Respondent in reply. The outcome does not depend upon disputed questions of fact and I am satisfied that it is appropriate to determine the application without a hearing.

16. The Respondent argues that it has no obligation to repay the holding deposit because the parties did not enter into a binding agreement to transfer the deposit from the Joan Street property to the Northbourne Street one. This is said to follow from the fact that the signed 'Pre-tenancy & Holding Deposit Agreement' relating to 9 Northbourne Street was not returned by the Applicants until after close of business on Friday, 28 February 2020 (and the landlord having let the property to somebody else by the following Monday morning).
17. I do not agree with that analysis. Whilst the landlord of 9 Northbourne Street was never under any obligation to let that property to the Applicants, the email exchange which had taken place on that Friday afternoon between the letting agent and the Applicants (set out at paragraphs 10 and 11 above) evidences a clear and unconditional agreement to treat the earlier payment of £103 as a holding deposit for 9 Northbourne Street. As the landlord subsequently decided not to let that property to the Applicants, the holding deposit should have been repaid to them.

Outcome

18. For these reasons, the Respondent letting agent is ordered to repay the holding deposit of £103 to the Applicants. It must do so on or before 5 March 2021.
19. This order is made under section 15(9) of the Tenant Fees Act 2019 and, by virtue of section 15(11), it is enforceable by order of the County Court as if the amount payable under this order were payable under an order of that Court.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 22 February 2021