

Holding Deposit (after tenant fee ban)

Resolution requested: Refund the Holding Deposit

Award: £288.46

Resolved by: Proposed decision

What happened?

The landlord said:

- She arranged to view the property on 13th July 2019;
- Two days later, the agent confirmed the landlord had agreed to proceed and confirmed the monthly rent amount;
- On the same day, she paid one weeks' rent as a holding deposit;
- Three hours later, she requested it be refunded, because the move in date was too soon and there was a suggestion that the landlord may want to sell the property in the near future;
- The agent refused, saying that the holding deposit was non-refundable;
- An conditional agreement was then made to delay the move in date and not sell the property until the tenancy ended;
- On 3rd August, she asked the agent why the holding deposit had not been refunded;
- She questions whether the holding deposit, in this case, was a prohibited fee under the Tenant Fees Act 2019 (the Act) as she was not told why it was being kept by the agent

Note: We recognise that cases vary and the outcome will depend on the interpretation of the evidence provided.

The agent responded, saying that:

- The property was taken off the market, after the tenant made an offer to rent the property and the holding deposit was received;
- The application for referencing was processed before the tenant somewhat confusingly said they did not want to proceed and then asked if she could move in at the beginning of August;
- The tenant was asked to confirm her position by 24th July 2019; however did not respond until 3rd August 2019 which was past the deadline for agreement date and the holding deposit did not need to be refunded.

What evidence was provided?

Emails, holding deposit form, text screenshots.

What was decided and why?

Quality of tenant and damage

1. The prospective tenant paid the holding deposit on 15th July 2019
2. This made the deadline for agreement date the 30th July 2019 (the 15th day after the holding deposit was paid) and which the evidence confirmed both parties initially agreed to
3. The agent offered the prospective tenant until the 24th to confirm if they were going to enter into the agreement
4. The agent, having made all reasonable attempts to make sure the tenancy went ahead, heard nothing more until after the 30th July and the tenancy did not start

Note: We recognise that cases vary and the outcome will depend on the interpretation of the evidence provided.

5. While the prospective tenant had not kept to the 'deadline for agreement' date, and in theory should have forfeited their holding deposit, the overriding issue was that the agent had not provided the reasons for keeping the holding deposit, in writing within 7 days after the 'deadline for agreement' has passed

How can you avoid this happening in future?

- Just taking a holding deposit and saying that it is non-refundable is not allowed
- A tenant must be clearly told why you are requesting a holding deposit, the amount required and in what circumstances it can be retained
- Where a tenancy does not go ahead, the tenant is entitled to be refunded with a portion of the holding deposit where it is reasonable to do so
- Following the introduction of the Tenant Fees Act, a holding deposit must be refunded where a tenant does move in unless it is agreed that it can be used as part of the deposit or the first months' rent
- If the Tenant Fees Act rules for retaining the holding deposit are not followed, it will be refunded to the prospective tenant or to the person who paid it

Under the [Tenant Fees Act 2019 schedule 2](#) and the [Landlord Agent Guidance](#) p33, the rules on Holding Deposits are explained in depth.

For a summary please see the PRS [Holding Deposits Guide England 2019](#)

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