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Tenancy Deposit Schemes (TDS) - information for Landlords, Agents and Inventory Clerks.

What is a tenancy deposit?

A tenancy deposit is paid by the tenant, to the landlord, as security in connection with a tenancy. It remains the property of the tenant and is refundable at the end of the tenancy.

What the deposit covers and the terms and conditions for returning it should be included in the tenancy agreement. Landlords may properly deduct an appropriate amount for damage, rent arrears or other costs, provided there are clauses in the tenancy agreement allowing the landlord to do so.

The deposit may not be used to cover “fair wear and tear”.

In the event of a legitimate claim, the tenant only forfeits the amount required to cover the landlord’s loss (up to the value of the deposit). The remainder should be returned to the tenant promptly.

When making a claim we recommend that landlords speak to their tenants and follow this up in writing, together with any receipts, invoices or quotes to justify the sum.

We also recommend that landlords use **inventories** and keep records of rent payments (whether paid or not). These may become crucial in the event of a tenancy deposit dispute.

What is the law on tenancy deposit protection?

Tenancy deposit protection (TDP) came into affect on 6 April 2007. It affects all landlords:-

- Who let property in England and Wales
- Use an Assured Shorthold Tenancy Agreement (AST)
- Take a tenancy deposit

Landlords do not have to take a deposit, but if a deposit is taken it must be monetary and it must be protected in a government-authorized tenancy deposit scheme (TDS). Landlords living elsewhere in the UK may have to join one of the schemes if they are letting property in England or Wales.

At present tenancy deposit protection does not apply to Scotland and Northern Ireland, but the Scottish Government is looking at various options.

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The Licensed Inventory Scheme (LIS) is a trading name of Inventory-Portal Ltd
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Three schemes have been authorised by the Government:

- A custodial scheme run by the Deposit Protection Service (www.depositprotection.com)
- An insurance-based scheme operated by Tenancy Deposit Solutions Ltd (a company jointly owned by the National Landlords Association and Hamilton Fraser Insurance Services Ltd) (www.mydeposits.co.uk)
- A second insurance scheme operated by the Dispute Service (www.tds.gb.com)

What does a landlord have to do?

Within 14 calendar days of receiving a deposit from a tenant the landlord has to:

- Give the tenant (or whoever paid the tenancy deposit on their behalf) prescribed information about the deposit scheme which he is using
- Comply with the initial requirements of the scheme which they are using and tell the tenant (or the person who paid the deposit) what they have done to comply with the requirements
- Give the tenant (or whoever paid the deposit) information about the law relating to tenancy deposits.

All the deposit protection schemes give the landlord information to give to the tenant. At the end of a fixed term tenancy, the deposit must be re-protected if a new fixed term Assured Shorthold Tenancy is set up.

What happens if I don't comply?

If the tenant (or the person who paid their deposit) does not believe that the landlord is complying with an authorised scheme they can take him to court.

If the landlord is found guilty the court can order the person holding the deposit to repay it to the tenant, or pay it into the custodial deposit scheme, within 14 days calendar days.

The court must also order the landlord to pay the tenant 3 times the deposit amount as a penalty.

Furthermore a landlord will not be able to regain possession using the Section 21 route if he has not complied with the requirements of a deposit scheme or has not given the tenant information about the law relating to deposits and the scheme itself. What about using other items other than money for a deposit?

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The Housing Act specifically forbids anything other than money to be used as a deposit.

If a landlord takes anything else as a deposit it is recoverable by the person who gave it.

If the landlord or agent doesn't return such property they use the Section 21 route to regain possession.

Landlords can continue to use rent guarantees from third parties (such as local authorities or parent of students). These guarantees do not have to be registered with a deposit scheme provided no money is physically transferred.

How does the custodial deposit scheme work?

At the start of the tenancy the landlord has to pay the deposit into an account under the scheme. The money is kept in that account until it is paid at the end of the tenancy once landlord and tenant have notified the scheme that they have agreed how the deposit should be split. The scheme has to pay out the agreed amounts within 10 days of receiving notification from both parties.

If the parties cannot agree on how to split the deposit the scheme has alternative dispute resolution to allow the matter to be settled by mediation without having to go to court. The dispute resolution is not compulsory and either party can choose to go to court instead (with the increased associated costs) but if both parties agree to use ADR they have to be agreed to be bound by the outcome. They do not have the right to go to court to appeal against the decision reached through alternative dispute resolution.

In the event of a dispute, once the problem has been resolved the scheme will pay out the deposit within 10 days of being notified of the outcome.

The interest that accrues on the deposit throughout the tenancy funds the running costs of the scheme. If there is any interest left over after the costs have been met it will be returned, in proportion to the amount of the deposit returned, to the tenant. Surplus interest on the landlord's share will only be repaid to the landlord if the tenancy agreement allows for this.

How do the insurance-based schemes work?

Under an insurance scheme when the landlord receives the deposit at the start of the tenancy he can keep it, on the basis that at the end of the tenancy an amount agreed between tenant and landlord will be paid to the tenant. The insurance will come into play if this does not happen.

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At the start of the tenancy the landlord has to notify the scheme he has joined about the deposit he has taken and wishes to protect. The landlord pays a fee to cover the insurance protection.

At the end of the tenancy, if the tenant has requested the repayment of part or all of a deposit and the landlord has not paid it back within 10 days, the tenant can approach the scheme administrator. The landlord then has to pass the disputed amount to the scheme administrator within 10 days of receiving notice from the administrator.

Once the tenant and landlord have agreed how the disputed amount should be split they can notify the scheme administrator and the money has to be paid out within 10 days.

Both insurance schemes have alternative dispute resolution to enable a solution to be found without the need to go to court. Either party can choose to go to court (with the increased associated costs) instead of using ADR but if both parties agree to use ADR they have to agree to be bound by the outcome. They do not have the right to go to court or appeal against the decision reached through alternative dispute resolution.

There are membership fees and insurance costs associated with joining an insurance-based deposit protection scheme. However, landlords enjoy the benefit of being able to hold onto the deposit throughout the tenancy. Further details are on the websites of the schemes.

What happens if my tenant has disappeared?

To release the deposit from the custodial scheme requires the agreement of both landlord (or agent) and tenant. In some cases one of the parties may have disappeared or the landlord may be unresponsive to communications. In such an event the remaining party can make a statutory application to the deposit scheme, explaining the efforts they have made to contact the other party and asking for some or all of the deposit to be released to them. The scheme will then follow a procedure to make its own best efforts to contact the other party and if that fails then the money will be released to the remaining party.

This Information is intended as general guidance only and does not constitute accountancy, tax, investment or other professional advice.

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