

The Tenancy Deposit Protection Scheme

This scheme is in place for all tenants who rent and have an Assured Shorthold Tenancy, regardless of the type of property or how many people live there. This scheme has been introduced to ensure that when a tenant pays a deposit and is entitled to get it back, they can be assured that this will happen. The scheme legally comes into effect on 6th April 2007 and means that any deposits taken on or after this date should be protected.

Basics

- It is the landlord's responsibility to make sure that their tenant's deposit is protected.
- They can choose between 2 versions of the scheme: Custodial or Insurance-based.
- When a landlord receives a deposit, he has 14 days to safeguard it using one of the two schemes, even if the tenancy does not begin until some time in the future.
- Within these 14 days, he must also provide the tenant with 'prescribed information' about the scheme he is using. This should include the contact details of the Scheme, the contact details of the landlord or agent, how to apply for the release of the deposit, information explaining the purpose of the deposit and what to do if there is a dispute about the deposit.

Custodial Scheme

The tenant pays their deposit to the landlord who will then hand over the full amount to the Scheme administrators. At the end of the tenancy, both parties must agree on how the deposit should be returned and should individually inform the scheme who will then pay out the money as agreed within 10 days of being notified.

- The only authorised version of this Scheme is being run by The Deposit Protection Service (www.depositprotection.com).

Insurance-based Scheme

The tenant pays their deposit to their landlord who will hold onto it, but who will have to pay a premium to one of the two authorised insurers running this Scheme which ensures that the deposit is safeguarded. At the end of the tenancy, if both parties agree on how the deposit should be returned, then the landlord will be responsible for doing this within 10 days of the tenant requesting it.

- The two authorised insurers running this Scheme are: Tenancy Deposit Solution Ltd (www.mydeposits.co.uk) and The Tenancy Deposit Scheme (www.tds.gb.com).

Alternative Dispute Resolution (ADR)

If the tenant and landlord cannot agree on how the deposit should be returned, then ADR is available. ADR is a service provided by the chosen scheme; it is free to use and aims to resolve disputes between tenants and landlords as quickly and amicably as possible. The proposed amount of time for resolving a dispute using ADR is one month, compared to approximately one year if you go through the courts. Both the tenant and landlord must agree to use this service and in doing so, agree to be bound by the decision made with no recourse to the courts. In future, disputes will only have to go to court if both the tenant and the landlord refuse to use ADR.

- **ADR & the Custodial Scheme** - if the landlord and tenant both agree to use ADR, then the deposit continues to be held by the scheme until a decision is made. Once this happens, the deposit will be returned according to the decision within 10 days of the scheme being notified. If the landlord or tenant becomes uncontactable or is being uncooperative in agreeing on how the deposit should be returned, for example by refusing to resolve the dispute through ADR, then the other party can make a claim to have the full deposit paid to them. If a claim is made, then the case will automatically be referred for ADR as the default method of resolution.
- **ADR & the Insurance-based Scheme** - if the landlord and tenant both agree to use ADR, then the landlord will give the disputed amount to the scheme to hold onto until a decision is made. Once this happens, the disputed amount of deposit will be returned accordingly by the scheme. The disputed amount may not be the whole deposit, eg. if the landlord wants to return all but £100 to the tenant because he says a carpet has been damaged but the tenant does not agree, the landlord will return the deposit minus the £100 to the tenant and give the Scheme the disputed £100. If the landlord does not hand over this money to the Scheme and does not return the appropriate amount to the tenant once a decision is reached, then the Scheme will pay the money out to the tenant and pursue the landlord themselves.

- If the landlord becomes uncontactable or is being uncooperative, the tenant can make a claim to have the full deposit returned to them. If a claim is made then the case will be automatically referred for ADR. Should ADR work out in the tenants favour, the Scheme will again pay out to the tenant and pursue the landlord themselves.

What to do if you discover your deposit is not protected

- If you pay your deposit to your landlord on or after the 6th April 07, then the landlord *has* to ensure it is protected.
- If your landlord does not give you the required prescribed information about the scheme being used and you suspect that your deposit is not protected, then you can apply for a court order requiring that your deposit be safeguarded.
- If the court agrees that your landlord has not protected your deposit or is not using one of the authorised schemes, then the court **MUST** either a) order the landlord to repay the deposit to you within 14 days of the order being made, or b) order the landlord to pay the deposit to the Custodial Scheme administrator immediately.
- The court **MUST** also order the landlord to pay you three times the deposit amount within 14 days of the making of the order.
- In addition, the landlord will not be able to use the 'notice only' clause of the Housing Act 1988. This clause allows them to regain possession of the property from tenants after the first 6 months of the tenancy and after any fixed term has expired, by giving 2 months written notice. If the landlord has not protected your deposit, he will not be able to do this, even if it is written into your contract.

Do not be afraid to ask a prospective landlord about what scheme they use when you are looking to rent a property; if they are a good landlord, they will have no problem in giving you this information.

You can also get more information on The Tenancy Deposit Protection Scheme from the Department of Communities and Local Government website www.communities.gov.uk

