

GUIDE TO TENANCY DEPOSIT SCHEMES

The Need for Advice

The relationship between a Landlord and Tenant can be long and sometimes bitter. Yet if the right legal advice is taken at the start this can be avoided.

We can help in resolving disputes between the parties but prevention is better than a cure. This is why we believe it is best for Landlords and Tenants to understand their rights and duties regarding a deposit for a tenancy agreement.

This guide describes tenancy deposit schemes which affect all residential tenancies created since 6 April 2007.

Introduction

All deposits taken by Landlords and letting agents must be held in one of three government approved tenancy deposit schemes. These schemes make it easier to resolve disputes over deposits. They protect tenants by preventing Landlords and lettings agents from unfairly withholding a deposit.

Tenancy deposit protection (TDP) schemes guarantee that tenants will get their deposits back at the end of the tenancy, if they meet the terms of the tenancy agreement and do not damage the property.

If these conditions don't apply - for example, because the Landlord lives in the property with the tenant – your Landlord does not have to protect the deposit. However, it is still good practice and the Landlord should do so.

Landlords or agents must use one of the three approved TDP schemes to protect the deposit where these conditions apply. If any other scheme is used, deposits are not protected in law. The three approved schemes are:

- Deposit Protection Service (DPS)
- MyDeposits
- Tenancy Deposit Scheme (TDS)

If the Landlord does not protect the deposit when required to, the tenant can take the Landlord to court and they may have to repay the deposit

plus three times the amount of the deposit. The Landlord may also be unable to seek possession of their property in certain circumstances.

A Landlord must within 14 days of receiving a deposit give details of how the deposit is protected.

Tenancy Deposit Schemes

There are two types of TDP schemes - custodial and insurance-based. Any landlord can use the custodial scheme but there are some restrictions on who can use the insurance-based schemes.

Tenants can expect a decision as to how much of their deposit is going to be returned to them within ten days from the end of the tenancy. Any part of the deposit kept back at this stage will remain protected in the scheme being used until such time as any dispute is resolved. The exact arrangements depend on the type of scheme used.

Custodial Scheme

The Deposit Protection Service (DPS) provides the only custodial TDP scheme. Under this scheme the Deposit Protection Service holds the deposit money in a bank account. When the tenancy ends, it releases the deposit to the person who is entitled to it.

If the Landlord based overseas, they must use the custodial DPS scheme, unless they employ a UK-registered letting agent to manage the tenancy.

If the Landlord uses the DPS for tenants using a rent deposit scheme (for example, a council pays the deposit) and the tenant leaves, the Landlord can agree with the council or third party to keep the deposit in place for the next tenant.

Insurance-based Schemes

Under insurance-based schemes, the Landlord or the Landlord's agent holds the tenant's deposit and pays a fee to insure it (against the Landlord illegally keeping the deposit). If the Landlord does not pay the tenant the amount they are owed at the end of the tenancy, the insurer will pay the tenant and try to get the money back from the Landlord.

If the tenants' deposits are paid in instalments as part of a rent deposit scheme, the Landlord must use an insurance-based TDP scheme.

The only two insurance-based providers are:

- MyDeposits
- Tenancy Deposit Scheme (TDS)

If you require advice about tenancy deposit schemes, or any other legal matter, do not hesitate to contact us by email

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