

THE TENANCY
DEPOSIT SCHEME,
WHICH HAS
BEEN GATHERING
MOMENTUM FOR
SEVERAL YEARS
NOW, HAS FINALLY
BECOME LAW.

Tenancy Deposit Schemes Take Hold

Tenancy Deposit Schemes were introduced on the 6 April 2007 by the Housing Act 2004 meaning that any landlord or letting agent who takes a deposit – usually of one month's rent – will have to 'protect' by signing up to Government-backed authorised schemes. The purpose of such schemes are to safeguard the deposits paid by tenants in connection with assured shorthold tenancies (ASTs), that is those tenancies granted to an individual (not a company) up to an annual rent of £25,000.



Custodial Scheme

There are two types of scheme under the legislation. The first is a custodial scheme and at present there is only one authorised provider, the Deposit Protection Service. Under this scheme the landlord must pay the deposit received from the tenant into a designated account held by the scheme administrator within 14 days of receiving it. The deposit will remain in this account until the tenant and the landlord notify the administrator how it is to be allocated at the end of the tenancy. Only when both parties have notified the administrator of the agreement reached the deposit will be paid out in the proportions agreed.

If the parties cannot agree the scheme administrator will retain the deposit until a binding Alternative Dispute Resolution (ADR) has been given or a court order has been issued. ADR under the custodial scheme will be provided by the Chartered Institute of Arbitrators. The scheme and any ADR that is required will be free to both landlords and tenants. The administrator will be allowed to retain the bulk of the interest which has accrued which will help to fund the scheme and ensure that landlords do not have to pay a joining fee. If the deposit is apportioned the interest payable on the deposit, currently set by the legislation at 2.5%, will be paid pro-rata.

Once the landlord and tenant notify the administrator of how the deposit is to be paid, the administrator must arrange for the deposit to be repaid within 10 days following his notification. Similar time limits apply to the administrator and the court.

Insurance-Based Schemes

The other type of schemes are insurance based schemes and two providers have been approved, Tenancy Deposit Solutions Limited, a partnership between the National Landlords Association and Hamilton Fraser Insurance, and the Tenancy Deposit Scheme operated by the Dispute Service.

Under these schemes the landlord will retain the deposit in the usual way and only pay it over to the administrator if there is a dispute at the end of the tenancy. The landlord will be charged a joining fee by the scheme administrator but could potentially retain the interest paid on the deposit held throughout the tenancy.

If there is a dispute at the end of the tenancy over the amount of the deposit to be returned to the tenant and the landlord does not pay the deposit to the scheme administrator, the scheme will be required to repay the tenant and will then be in a position of trying to extract to amount they have paid from the landlord. The tenant is

therefore protected from a Landlord who absconds with the deposit or who is insolvent at the end of the tenancy. Like the custodial scheme the insurance based schemes offer ADR at no cost to either the landlord or the tenant. Within 14 days of signing the tenancy agreement, the landlord must confirm to the tenant:

- which scheme they have opted to use,
- that he has complied with the requirements of the scheme they have chosen
- how the legislation applies to the way their deposit it held
- how disputes at the end of the tenancy will be dealt with

Should the landlord fail to comply with the requirements the landlord will be unable to regain possession of their property by serving a section 21 notice and may be liable to pay the tenant three times the amount of the deposit upon an application to the court by the tenant.

Tenancies that were already in existence on the 6 April 2007 will become subject to the new law if they are renewed.



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