



Tenancy Deposit Scheme

A Quick Guide

This guide is intended to give general advice on the regulations surrounding Tenancy Deposit Protection (TDP) Schemes.

WHAT IS A TENANCY DEPOSIT PROTECTION SCHEME?

TDP schemes are supposed to assist tenants in obtaining all or part of their deposit back from their landlord providing they are entitled to it i.e. that they have met the terms of their tenancy agreement, that they have not damaged the property and that payments of rent and bills are up to date.

OLD AND NEW LEGISLATION

Under the Housing Act 2004, if a tenancy began on or after 6 April 2007 and was let on an Assured Shorthold Tenancy, the landlord was required by law to protect the deposit and hold it in one of the government-backed TDP schemes within 14 days of receipt.

As of 6 April 2012, this has been amended and landlords are now required to protect and register the deposit within 30 days of receipt.

HOLDING DEPOSITS / DEPOSITS MADE BY A THIRD PARTY

A holding deposit is the money a tenant pays to 'hold' a property before an agreement is signed.

A landlord does not have to protect a holding deposit however once an agreement has been signed and that person becomes a tenant, the holding deposit becomes a deposit which the landlord must then protect.

A landlord must use a TDP scheme even if the tenant's deposit

is paid by someone else, like a rent deposit scheme or a parent/guardian.

WHAT INFORMATION MUST A LANDLORD GIVE TO THE TENANT?

At the start of an Assured Shorthold Tenancy, the Housing Act 2004 places a requirement on the landlord that, when accepting a deposit, the landlord is required to ensure that:

1. The deposit is protected by one of the government backed Tenancy Deposit Protection schemes;
2. They follow the rules of the Tenancy Deposit Protection Scheme which they have registered with; and
3. The tenant is provided with information regarding the Tenancy Deposit Protection Scheme and how their deposit is being protected within 30 days of the deposit being received, including:
 - the address of the rented property
 - how much deposit the tenant has paid
 - how the deposit is protected
 - the name and contact details of the tenancy deposit protection (TDP) scheme and its dispute resolution service
 - the landlord's name and contact details
 - the name and contact details of any third party that has paid the deposit
 - reasons why the landlord would keep some or all of the deposit
 - how the tenant can apply to get the deposit back
 - what to do if the tenant cannot get hold of the landlord at the end of the tenancy
 - what to do if there is a dispute over the deposit

WHAT IF A LANDLORD FAILS TO REGISTER THE DEPOSIT OR PROVIDE THE TENANT WITH INFORMATION ON THE TENANCY DEPOSIT PROTECTION SCHEME?

Failure to comply with the regulations may lead to the landlord facing court action and encountering problems in seeking automatic possession of the property under Section 21 of the Housing Act 1988 (as amended by the Housing Act 1996).

If the court agrees that the landlord has failed to pay the deposit into a Tenancy Deposit Protection Scheme, they may either require the landlord to repay the deposit to the tenant or to pay the deposit themselves into a Tenancy Deposit Protection Scheme.

It is also important to note that the tenant has the right to seek compensation up to three times that of the deposit if the landlord does not provide them with information about the Tenancy Deposit Protection Scheme used.

SUPERSTRIKE LTD VS. RODRIGUES

The recent case of Superstrike Ltd vs. Rodrigues has dealt with certain issues surrounding the legislation regarding tenants' deposits and raised the application of that legislation where a deposit was paid under an AST already in existence on 6 April 2007.

The judgment handed down by Lord Justice Lloyd in the Court of Appeal on 14 June 2013 has decided that an AST entered into before 6 April 2007 and which became a statutory periodic tenancy after that date is considered to be a 'new tenancy'.

It is therefore a requirement that any deposit paid by the tenant under the original tenancy must be/have been registered within 30 days of the 'new tenancy' coming into effect.

WHAT DOES THIS MEAN FOR LANDLORDS?

Since the Court of Appeal has held that a statutory periodic tenancy is not a continuation of a fixed term tenancy but a 'new tenancy', the ramifications of this ruling for landlords are serious since for so long as the requirements are not complied with, a landlord will not be able to recover possession under the compulsory procedure pursuant to Section 21 of the Housing Act 1988 and landlords may be liable for sanctions if found to be in breach of the regulations.

There does not seem to be any suggestion that a deposit which is already protected will need to be 'un-protected' and then re-protected at the end of the fixed period (when the tenancy becomes a statutory periodic tenancy) or for tenancy renewals, though we would not risk suggesting otherwise until there is some judgement on this. However, this might mean that new prescribed information must be given not only at the time of 'physically receiving' the deposit but also whenever a tenancy becomes a statutory periodic tenancy or a renewal is provided.

If anyone would like us to advise them on individual situations, we would be delighted to help.

HOW CAN A TENANT GET THEIR DEPOSIT BACK?

This will differ depending on which TDP Scheme the landlord has used to protect the tenant's deposit however the general procedure is that if the landlord and the tenant agree on how much deposit the tenant will get back, the agreed sum must be returned to the tenant within 10 days of the tenancy ending.

If the tenant is in a dispute with the landlord, then the deposit is protected in the TDP scheme until the issue has been sorted. If no agreement can be reached, either party can raise a tenancy deposit dispute with their TDP Scheme who should provide free, impartial adjudication to decide how the deposit should be divided.

For more information, please contact Tony Kent at tony.kent@mackrell.com or Tanya Hamway at tanya.hamway@mackrell.com. Alternatively, please call us on **0207 240 0521**.