

INFORMATION - Changes To How Tenancy Bonds (deposits) Are Held

From 6 April 2007, all deposits taken by landlords or their agents for Assured Shorthold Tenancies (AST) in England and Wales must be protected by a tenancy deposit protection scheme. The Government has awarded contracts to three companies to run Tenancy Deposit Protection (TDP) schemes, one custodial deposit scheme and two insurance based schemes – details to follow at the end of this information leaflet.

Why is Tenancy Deposit Protection being introduced? To ensure good practice in deposit handling, so that when a tenant pays a deposit, and is entitled to get it back, they can be assured that this will happen. Also, to assist with the resolution of disputes by having an Alternative Dispute Resolution service (ADR). It will also encourage tenants and landlords to have in place clear agreement on the condition of the property such as the use of detailed inventories and agreement on the condition of the property.

About the one Custodial scheme The tenant pays the deposit to the landlord; The landlord then pays the deposit into the scheme; Within 14 days of receiving a deposit, the landlord must give the tenant the prescribed information (to be set out in secondary legislation) about the scheme being used and the tenancy; At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they will tell the scheme which returns the deposit, divided in the way agreed by both parties; The deposit must be returned within **ten** days of the scheme being notified of agreement between the landlord and tenant or notified of an ADR/court decision. If there is a dispute, the scheme will hold the amount until the dispute resolution service or courts decide what is fair; The interest accrued by deposits in the scheme will be used to pay for the running of the scheme and any surplus will be used to offer interest to the tenant, or landlord if the tenant isn't entitled to it. Where the deposit, or part of it, is divided between the landlord and tenant the interest will be allocated pro-rata.

About the two Insurance-based schemes The tenant pays the deposit to the landlord; The landlord retains the deposit and pays a premium to the insurer (the key difference to the custodial scheme) – this fee is for registering as member of the scheme, for each deposit protected, and for annual renewal of membership. Fees will be tax-deductible against letting income Within 14 days of receiving a deposit, the landlord must give the tenant prescribed information (to be set out in secondary legislation) about the scheme being used and the tenancy; At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit; The deposit must be returned within ten days of the tenant requesting that the landlord return his deposit. In case of a dispute: within ten days of the scheme being notified of the ADR service's, or court's. If there is a dispute, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it. In each scheme, the deposit must be returned within ten days of the landlord and tenant agreeing how the deposit should be divided, or within ten days following notification of an ADR/court decision. To avoid disputes having to go to the courts, both schemes will be supported by an Alternative Dispute Resolution (ADR) service - although the use of this will not be compulsory.

Eg For example, a tenant has paid £1000 as a deposit. At the end of the tenancy the landlord states that he wishes to retain £200 to pay for the replacement of damaged furniture, but the tenant disagrees claiming the property was already in that condition when he or she moved in. If the landlord only wishes to retain £200, the remainder of the deposit (£800) has therefore been agreed to belong to the tenant and should be returned to him/her. The disputed £200 will be transferred to the scheme administrator until the dispute is settled.

Alternative Dispute Resolution (ADR) service. When a dispute occurs, and if landlord and tenant both agree to use the ADR service, they will also agree to be bound by its decision with no recourse to the courts. Disputes will only go to the courts if the landlord and tenant do not agree to use the ADR service. In the custodial scheme, where a landlord or tenant does not co-operate in order to release the deposit, i.e. by not agreeing to the release of full or part of the deposit; and not agreeing to resolve the dispute through ADR or court, ADR will be the default way in which to resolve a dispute. In the Insurance-based scheme, where the landlord is contactable by the scheme but is refusing to co-operate with the scheme in terms of choosing ADR or the courts, it will be mandatory for the case to be referred to the scheme for resolution through its ADR service

What happens if the landlord or tenant cannot contact the other party to agree how the deposit should be returned, or where one party is being obstructive? A 'single claim' can be submitted in these circumstances. If the landlord is unable to contact the tenant, he can submit a single claim indicating the reason for the claim, including evidence. If a tenant cannot contact the landlord and makes a single claim, no other reason is required as the deposit is the tenant's money. A single claim can also be made, if both the landlord or tenant are contactable, but one party refuses to co-operate - either in agreeing deposit release or agreeing to resolve any dispute via ADR or court.

What happens if a deposit has not been protected? **a) Unable to use 'notice only'** Currently, a landlord can obtain an order for possession of an AST at any point after the first six months of the tenancy providing any fixed term has expired and the landlord gives the tenant at least two months' written notice (Under Section 21 of the Housing Act 1988). This is known as 'notice-only'. However, under TDP, the landlord is unable to regain possession of the property using the usual 'notice only grounds', if the deposit has not been safeguarded and the prescribed information passed onto the tenant within 14 days of the landlord receiving it. **b) Fine** Tenants can apply for a court order requiring the deposit to be safeguarded or the prescribed information to be given to him about the scheme in which the deposit is safeguarded.

Where the court believes that the landlord has failed to comply with these requirements, or the deposit is not being held in an authorised scheme, the court must either order the landlord within 14 days of the making of the order to repay the deposit; or order the landlord to pay the deposit to the custodial scheme administrator.

The court must also order the landlord to pay to the tenant a fine of three times the deposit amount within 14 days of the making of the order.

THE SCHEMES CONTACT INFORMATION - The Government has awarded contracts to three companies to run tenancy deposit protection schemes from 6 April 2007. It is the landlord – not the tenant – that will have the option to choose whether to safeguard the deposit in the custodial or an insurance-based scheme.

Any deposits taken by Saxton Mee Limited whether Tenant Finding or Tenancy Management Service will be paid over to the Custodial Deposit Scheme provided by The Deposit Protection Service (The DPS) - **Computershare Investor Services plc**

The Deposit Protection Service (The DPS) - Computershare Investor Services plc - They will run the single custodial deposit scheme, with the Chartered Institute of Arbitrators providing the Alternative Dispute Resolution (ADR) service. A single custodial scheme is where deposits will be paid into and held in a separate account managed by the scheme. This custodial scheme will be free to use for tenants and landlords. The scheme will be funded by the surplus from interest generated on the pool of deposits. For more information:- Write: DPS, Computershare, The Pavilions, Bridgwater Road, Bristol BS39 7SF Call: 0844 4727000 or visit www.depositprotection.com

The Tenancy Deposit Scheme (TDS) - TDS is one of the two insurance-backed deposit protection and their dispute resolution scheme is run by The Dispute Service that builds on a scheme established in 2003 to provide dispute resolution and complaints handling for the lettings industry. The new scheme enables letting agents and landlords to hold deposits. **For more information:-** Write: TDS Limited, PO Box 541, Amersham, Bucks HP6 6ZR Call: 0845 226 7837 Fax: 01494 431123 or Visit: www.tds.gb.com

Tenancy Deposit Solutions Ltd (TDSL) - TDSL is the other insurance-backed deposit protection and is a partnership between the National Landlords Association and Hamilton Fraser Insurance. This insurance-based tenancy deposit protection scheme enables landlords, either directly or through agents, to hold deposits. For more information, TDSL, 3rd Floor, Kingmaker House, Station Road, New Barnet, Hertfordshire, EN5 1NZ. Web: www.mydeposits.co.uk .

All three schemes will offer alternative dispute resolution services which will be free to use (for both landlord and tenant).

If landlords and tenants require more information about tenancy deposit protection they should firstly, contact their representative body, if they are a member of one. If they are unable to answer your query, or you are not a member of a representative body, you can put your query in writing to The TDP Team, Housing Markets Division, Communities and Local Government, Zone 2/J10, Eland House, Bressenden Place, London SW1 5DU or Email:tenancy.deposits@communities.gsi.gov.uk. Or call 0207 944 4400