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## Guidance on Tenancy Deposit Protection for Assured Shorthold Tenancies

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### 1. Introduction

- 1.1 Tenancy deposit protection (TDP) schemes ensure that deposits paid by Assured Shorthold Tenants are kept safe and that Landlords act properly in making deductions from deposits.
- 1.2 TDP schemes guarantee that Tenants will get their deposits back at the end of the tenancy, so long as they have complied with their obligations in the tenancy agreement and have not damaged the property.
- 1.3 Landlords must protect their Tenants' deposits using a TDP scheme if they have let the property on an Assured Shorthold Tenancy (AST) which started on or after 6 April 2007 (the date the TDP legislation came into force).
- 1.4 Landlords must also protect Tenants' deposits using a TDP scheme if an AST was entered into before 6 April 2007 and became a periodic tenancy after that date.
- 1.5 It is advisable for Landlords to protect deposits in a TDP scheme even where the AST started before 6 April 2007 and was converted into a periodic tenancy before that date. This is because the courts decided in December 2014 that the restriction on seeking possession (see section 3.2 below) applies in these circumstances.
- 1.6 If a tenancy is not an AST, the Landlord does not have to use a TDP scheme for the deposit. However, the Landlord may wish to do so as a matter of good practice.

### 2. Capped Security Deposits (England)

Under the Tenant Fees Act 2019, from the 01 June 2019, security deposits for new or renewed tenancies in England must be capped at five weeks' rent if the yearly rent is under £50,000 or six weeks' rent if the yearly rent is £50,000 or more.

The weekly rent is worked out as the annual figure divided by 52.

Security deposits for tenancies entered into before the 01 June 2019 will not be affected but note landlords will need to refund to a tenant the excess deposit which exceeds the cap for a fixed term renewal made on or after 01 June 2019.

Security deposits for tenancies in Wales are not currently capped but the Renting Homes (Fees etc.) (Wales) Act 2019 gives the Welsh government the power to introduce caps in the future.

### 3. TDP schemes

- 3.1 There are three official TDP schemes. The Landlord must use one of these schemes. They are:

- 3.1.1 Deposit Protection Service (DPS) – a “custodial” scheme where the Landlord pays the deposit to the DPS which holds the money in a bank account. When the tenancy ends, the DPS releases the deposit to the person who is entitled to it.
- a) Any Landlord can use this scheme. A Landlord based outside the UK must use this scheme, unless he employs a UK-registered letting agent to manage the tenancy.
  - b) There is no fee for using this scheme. It is financed entirely from the interest earned on the deposits held in the scheme.
  - c) For further information see: <http://www.depositprotection.com/>
- 3.1.2 MyDeposits – an insurance scheme where the Landlord retains the deposit but pays a premium to insure the deposit against the risk of the Landlord wrongfully keeping it. If the Landlord doesn't pay the Tenant the amount he is owed at the end of the tenancy, the insurer will pay the Tenant and try to get the money back from the Landlord.
- a) Any Landlord can use this scheme. Landlords pay a fee to join the scheme plus an insurance premium for each deposit.
  - b) For further information see: <http://www.mydeposits.co.uk/>
- 3.1.3 Tenancy Deposit Scheme (TDS) – another insurance scheme.
- a) TDS runs along the same lines as the MyDeposits scheme, but it is only available to Landlords who belong to an approved professional body where members have client money protection insurance. Examples of approved bodies include the Association of Residential Letting Agents (ARLA), the Royal Institution of Chartered Surveyors (RICS), the National Association of Estate Agents (NAEA) and the National Approved Letting Scheme (NALS).
  - b) For further information see: <http://www.thedisputeservice.co.uk/>

#### **4. What happens if the Landlord does not protect a deposit?**

- 4.1 If Landlords do not protect their Tenants' deposits when required to, their Tenants can take them to court. Landlords can be required to repay the deposit to the Tenant together with between one and three times the amount of their deposit.
- 4.2 Landlords who have not protected their Tenants' deposits in accordance with the TDP legislation will also be unable to seek possession of their property in certain circumstances.

#### **5. What if there is a dispute as to how much of the deposit is to be returned?**

- 5.1 All three schemes provide a free service to resolve disputes. It is also open to the Tenant to refer the dispute to the county court.
- 5.2 Landlords should tell Tenants within ten days of the end of the tenancy how much of their deposit is going to be returned to them. Any part of the deposit

kept back at this stage will remain protected in the TDP scheme until the dispute is resolved.

5.3 The custodial scheme (DPS) will keep the deposit until its dispute resolution service or the courts decide how much of the deposit should be returned to the Tenant. Under the insurance-based schemes (MyDeposits or TDS) the Landlord must pay the disputed amount of the deposit into the scheme while the dispute resolution service considers the dispute. The scheme will then pay any amount due to the Tenant.

5.4 Please look at the individual schemes' websites for detailed information about their dispute resolution procedures:

5.4.1 <http://www.depositprotection.com/>

5.4.2 <http://www.mydeposits.co.uk/>

5.4.3 <http://www.thedisputeservice.co.uk/>

## 6. Holding deposits

TDP schemes do not cover holding deposits. Tenants sometimes pay a holding deposit before they have signed a tenancy agreement. It is best practice for landlords/agents to enter into a Holding Deposit Agreement with the prospective tenant so that clear information is given to the prospective tenant about when the deposit is to be repaid or retained.

Under the Tenant Fees Act 2019 (which affects England only), holding deposits must be capped at one weeks' rent and must be refunded within 7 calendar days of the tenancy being entered into (although there is provision for the holding deposit to be applied to the first instalment of rent or towards any permitted security deposit subject to the consent of the Tenant).

If the Landlord and Tenant fail to enter into a tenancy agreement within 15 days of receipt of the holding deposit paid by the Tenant ('the Deadline for Agreement') (unless an extension is agreed), the Landlord must repay the holding deposit to the tenant within 7 days of the Deadline for Agreement.

Landlords are not required to protect a holding deposit with a scheme before someone becomes a Tenant. If the Tenant consents to the holding deposit being applied to the security deposit then this must be protected with a scheme.

Under the Renting Homes (Fees etc.) (Wales) Act 2019 (due to come into force 01 September 2019) holding deposits are to be capped at one weeks' rent which is the same under the Tenant Fees Act 2019 and will also be subject to strict timeframes for repayment of the holding deposits.

## 7. What happens if the Landlord (or Letting Agent) does not comply with the Tenant Fees Act 2019?

7.1 A Landlord or Letting Agent in England who doesn't comply with the deposit requirements under the Tenant Fees Act 2019 in respect of new or renewed tenancies from the 01 June 2019 can be liable for a fine in the sum of £5,000 for a summary conviction. If a further offence is made within five years of the first offence, this will be a criminal offence and a landlord or letting agent could

be liable for an unlimited fine. Some local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution.

7.2 Landlords or Letting Agents in England can also be precluded from serving a section 21 (Form 6A) notice in certain circumstances.

## **8. Protecting deposits from student tenants**

Landlords must protect student Tenants' deposits using a TDP scheme if the students have an Assured Shorthold Tenancy (this will not always be the case) and the deposits were received on or after 6 April 2007.

## **9. Protecting deposits made by a third party**

9.1 If a Tenant's deposit is paid by someone other than the Tenant, e.g. a relative or friend, the Landlord still must use a TDP scheme.

9.2 The Landlord should ask the Tenant and third party how they are related and find out how much the third party wants to be involved in the process. For example, the deposit scheme administrator needs to know if the third party wants the deposit returned directly to them.

## **10. Prescribed information**

The TDP legislation requires Landlord to provide their Tenants with certain "prescribed information" within 30 days of receiving a deposit. Our Prescribed Information template can be used for this. Much of the required information will be contained in literature provided by the TDP scheme so copies of the relevant literature should be attached to the Prescribed Information notice and given to the Tenant.