

## Guidance on Tenant Fees Act 2019 for Residential Landlords and Letting Agents

The Tenant Fees Act 2019 ('the Act') comes into force on 01 June 2019 and applies to England only. The aim of the Act is to reduce the "hidden" costs that a tenant can face at the start of its tenancy.

Landlords and letting agents in England will now be prohibited from charging certain fees to a tenant and security deposits are to be capped. Holding deposits are also to be capped and must be fully refunded within strict time frames except in limited circumstances. Landlords and letting agents can face financial penalties for non-compliance and for repeat offences, they could be found guilty of a criminal offence.

Landlords or letting agents on their behalf, will not be able to evict a tenant using the section 21 eviction procedure to regain possession of their property until they have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit.

This Act is part of the Government's drive to make renting fairer and more affordable, improve transparency and affordability in England's residential lettings market.

This Guidance summarises the key provisions of the Act; which payments can be charged to a tenant and which are prohibited, the treatment of holding and security deposits, which tenancies are affected and the penalties for non-compliance.

### 1. Which tenancies are affected?

This Act applies to the following tenancies in England:

1. Assured shorthold tenancies (excluding ASTs of social housing);
2. Licence to occupy (excluding licence to occupy social housing); and
3. Student lettings.

Any new or renewed tenancies and licences granted on or after 01 June 2019 will be affected. If you granted a tenancy or licence before the 01 June 2019, you will be able to charge fees which may be prohibited under the Act until 31 May 2020, after which all tenancies and licences (listed above) will be caught by the Act.

For the avoidance of doubt, contractual tenancies, long leases (more than 21 years) and company lets are not caught by the Act.

The Renting Homes (Fees etc.) (Wales) Bill, has passed through the Welsh Assembly and is awaiting Royal Assent. Similar provisions to the Tenant Fees Act 2019 are proposed under this Bill. We will produce further guidance and updated documents once this Bill has been made into law.

## 2. What payments are permitted under the Act?

A tenant can be charged:

1. Rent;
2. A refundable tenancy deposit (capped at five weeks' rent if the yearly rent is less than £50,000 or capped at six weeks' rent if the yearly rent is £50,000 or more);
3. A refundable holding deposit (capped at no more than one week's rent);
4. The following 'default' fees, which must be written into the tenancy agreement:
  - a. Payments in the event of default for a lost key or security device only if such payments are reasonable and a landlord or letting agent on their behalf must be able to produce written evidence of the reasonable and properly incurred costs; and
  - b. Interest for late payment of rent (if the rent is unpaid for more than 14 days). The rate of interest must not exceed the rate of 3% above the Bank of England base rate.

Letting agents must publicise these default fees on their website and in their offices.

5. Utilities/Communication services/TV Licence/Council Tax (landlords or letting agents on their behalf must only charge the billed amount);
6. £50 fee for the landlord's consent for a variation, assignment or novation of a tenancy agreement which is requested by the tenant (excluding renewals or varying the term of the tenancy). A landlord may be able to charge more if such costs are reasonable and have been properly incurred and written evidence (invoice or receipt) is produced to the tenant; and
7. An early termination fee (in the event the tenant wishes to terminate early but not where the tenant is exercising a break clause). The termination fee must reflect the actual loss suffered by the landlord (for example, loss of rent the landlord would have received) or as a letting agent (referencing and marketing costs).

## 3. What payments are prohibited?

Landlords or letting agents on their behalf are prohibited from charging tenants any fees which are not permitted payments (described above).

1. Letting fees cannot be passed on to a tenant and must be fronted entirely by the landlord. Letting fees include:
  - Viewing fees;
  - Preparation of contracts;
  - Inventories;
  - Referencing;
  - Credit checks; and
  - Key collection
2. Landlords cannot charge a tenant for gardening or professional cleaning services (unless this is included in the rent);
3. Landlords cannot charge a higher deposit for pets (unless the total security deposit does not exceed the relevant cap);
4. The amount of a security and/or holding deposit which exceeds the caps referred to above will be a prohibited payment;
5. Renewal fees for a renewal of the tenancy agreement;

6. Payments in the event of default (unless they are permitted payments), for example a fixed penalty charge for a missed appointment with a contractor; and
7. Landlords or letting agents on their behalf are prohibited from charging increased rents for an initial period to offset the payments which are prohibited under the Act.

For the avoidance of doubt, the Act does not affect any entitlement to recover damages for breach of contract, either by way of a deduction from the tenancy deposit or court action.

#### **4. Security Deposits**

Tenancy deposits to secure the tenant's obligations under a tenancy must be capped at five weeks' rent if the yearly rent is less than £50,000 or capped at 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.

#### **5. Holding Deposits**

A holding deposit is usually charged to a tenant to secure a property prior to signing the tenancy agreement. You can still charge a holding deposit, but you must not charge more than one week's rent and you must not charge more than one holding deposit for one property at any one time. It is best practice 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.

There are strict timeframes for repayment of the holding deposit. Under the Act, the holding deposit 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 unless of receipt of the holding deposit paid by the tenant ('the Deadline for Agreement') (unless otherwise agreed), the landlord must repay the holding deposit to the tenant within 7 days of the Deadline for Agreement.

A holding deposit can be retained but only in limited circumstances, for example, where a prospective tenant provides misleading or false information or if the tenant withdraws and the landlord or agent has acted reasonably.

#### **6. Prohibited Arrangements**

Neither a landlord or a letting agent can require a tenant to make a prohibited payment to a third party or enter into a contract with a third party (other than for the supply of utilities) or require a tenant to make a loan in connection with the tenancy. For example, you cannot require a tenant to pay a third party that provides a service such as reference checks or credit checks.

#### **7. Amendments to the Consumer Rights Act 2015**

The Act amends the Consumer Rights Act 2015 requiring letting agents who advertise on third party sites (such as Zoopla or Rightmove) to either publicise their fees on these sites or ensure there is a link on these sites to the agent's website where the fee list is published.

## **8. What are the penalties and consequences for non-compliance?**

A term in a tenancy agreement which is caught by the Act and which seeks to impose a prohibited payment on the tenant will be void and the tenant will not be required to pay this sum under the agreement.

If a landlord or letting agent asks for a prohibited payment in error, the payment must be fully refunded to the tenant within 28 days.

The local Trading Standards Office or District Council (if the local authority is not a Trading Standard authority) will be the enforcing authority. Landlords and letting agents can be subject to a fine of up to £5,000 for a first offence. If a further offence is made within five years of the first, 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.

If a landlord or letting agent is convicted of an offence, this will result in a 'banning order' (under the Housing and Planning Act 2016) and it will be up to the relevant local authority as to whether a landlord or letting agent is added to the database of rogue landlords and property agents.

Landlords or letting agents will not be able to evict a tenant using the section 21 eviction procedure to regain possession of their property until they have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit.

## **9. Practical Steps for Landlords/Letting Agents to take:**

1. Landlords and letting agents must ensure that they are complying with the Act and have in place all the necessary checks prior to the grant of a new tenancy;
2. Landlords and letting agents must ensure their current tenancy agreements and holding deposit forms are fit for purpose.
3. Landlords and letting agents must ensure they keep accurate records and evidence of any payments that a tenant is required to make which may be referred to in the following:
  - Tenancy agreement;
  - Receipts and invoices;
  - Bank statements;
  - Correspondence; and
  - Other paperwork.

4. Letting agents must publish their fees on third-party letting sites or provide a link to their fee list on the third-party letting site.