



## Tenancy Deposit Legislation 2007

### New laws for tenancy deposit schemes

From **6 April 2007** all landlords of Assured Shorthold Tenancies (ASTs) in England and Wales will be required to join a mandatory tenancy deposit scheme. The scheme will not apply to deposits taken before the scheme came into force (6 April 2007), unless and until a new replacement tenancy agreement is signed.

There are two aims:

1. To ensure good practice in deposit handling
2. To provide an alternative dispute resolution service

Landlords can choose from two types of scheme an insurance based or a custodial scheme ( see below).

### Who will run the schemes?

#### Scheme operators

The Government awarded contracts to three companies to run its tenancy deposit schemes on 22 November 2006.

The three schemes are:

- **The Deposit Protection Service (The DPS)** - the only custodial deposit protection scheme – is free to use and open to all Landlords and Letting Agents. The service is funded entirely from the interest earned from deposits held. Landlords and Letting Agents will be able to register and make transactions online. Paper forms will also be available should internet access be an issue. The scheme will be supported by a dedicated call centre and an independent dispute resolution service.

For further information please go to [www.depositprotection.com](http://www.depositprotection.com)

- **Tenancy Deposit Solutions Ltd (TDSL)** 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. Letting agents can also join the scheme.

For further information please go to [www.mydeposits.co.uk](http://www.mydeposits.co.uk)

- **The Tenancy Deposit Scheme (TDS)** is an insurance-backed deposit protection and dispute resolution scheme run by The Dispute Service that builds on a scheme established in 2003 to provide dispute resolution and complaints handling for the lettings industry.

For further information please go to [www.tds.gb.com](http://www.tds.gb.com)

The provisions in the Act will make it a requirement that any landlord who wishes to take a monetary deposit must safeguard that deposit with a tenancy deposit scheme (TDS).

The aims of the provisions are to remove the risk of misappropriation of tenants' deposits by landlords and letting agents.

### **Tenancy Deposit Schemes**

Once the provisions come into force in April 2007 they will apply to all new tenancy deposits taken in connection with assured shorthold tenancies. The vast majority of tenants in the private rented sector are assured shorthold tenants and will therefore be entitled to the protection offered by a TDS.

Schemes will have two main purposes:

- to safeguard tenancy deposits paid in connection with assured shorthold tenancies; and
- to facilitate the resolution of disputes arising in connection with such deposits.

Arrangements will be made with bodies to set up and manage Tenancy Deposit Schemes on the Government's behalf. These will be scheme administrators. At present the intention is to do this through contractual arrangements with private organisations. Both custodial (where the deposit is paid into a scheme) and insurance-based schemes will be chosen as a result of a competitive tendering process where each proposed scheme will be examined against set criteria.

Schemes are likely to be self-financing, but the Government may provide financial assistance to cover some costs for the schemes. The Government will also be able, if necessary, to provide a financial guarantee for schemes, for example, should they be at risk from becoming insolvent or if a scheme administrator misappropriates the monies in the scheme.

The Government will be able to check the accounts of a scheme (and other information) to ensure the scheme is offering value for money and not misappropriating tenants' deposits.

Any amount of money taken by a landlord or agent acting on their behalf, from a tenant which acts as a security deposit, even if it is not called a 'deposit', will be protected by this legislation. This is to counter the possibility that some unscrupulous landlords may attempt to avoid having to take a deposit in accordance with a TDS by calling it by another name.

### **Requirements relating to tenancy deposits**

A landlord will not be able to take a deposit in respect of an assured shorthold tenancy unless it is to be covered by a TDS.

A landlord will have to:

- deal with a deposit in accordance with an authorised scheme,
- comply with the initial requirements of a scheme within 14 days and
- give the tenant the appropriate information relating to the deposit within 14 days of receiving the deposit.

Until this is done, the landlord will be unable to regain possession of the property using the usual 'notice only grounds' for possession. Under Section 21 of the Housing Act 1988 a landlord can obtain an order for possession of an assured shorthold tenancy at any point after the first six months of the tenancy providing any fixed term has expired and they give the tenant at least two months written notice.

Preventing a landlord from being able to use this ground will provide the tenant with a much greater security of tenure and will act as an incentive for landlords to ensure deposits are safeguarded by a TDS.

### **Court proceedings**

Where a landlord has not arranged for a deposit to be dealt with in accordance with a scheme or provided the tenant with relevant information within 14 days of receiving the deposit, the tenant can apply directly for a court order for the landlord to repay the deposit to that person or pay it into a custodial scheme.

If the landlord has failed to comply with these provisions by the date of the court hearing, the court must make the order as requested and order the landlord to pay the applicant an amount equivalent to three times the deposit within 10 days.

### **Custodial schemes**

Under custodial schemes, a tenant pays the deposit to a landlord who is then required to pay the whole of this amount into a designated scheme account. The scheme administrator will hold the deposit until it is paid to the tenant or landlord, in accordance with their agreement or following a court order, after the tenancy has ended.

The designated account must not contain any other monies except deposits and interest accrued on those deposits.

Where a scheme administrator returns a deposit to either tenant or landlord, they should do so with interest added at a rate specified by Government. Any interest additional to this can be retained by the scheme administrator and can be used to fund the administration of the scheme.

At the end of the tenancy, if both the tenant and landlord notify the scheme administrator that they have agreed that either the whole deposit is returned to one party or part of the deposit returned to both parties and the scheme administrator is satisfied that such an agreement has been reached, the scheme must pay out in accordance with the agreement within 10 days of receiving notification.

If no agreement is reached the scheme administrator will retain the deposit until either the tenant or landlord obtain a final court order specifying the proportion of the deposit to which each is entitled. The scheme administrator will then pay out in accordance with the court order within 10 days of receiving notification of the decision.

### **Insurance-based schemes**

Under insurance-based schemes, a landlord retains a deposit and only transfers it into a scheme if there is a dispute with the tenant at the end of the tenancy. The scheme will then hold the deposit until the dispute is settled. When the tenant and landlord reach agreement (perhaps through alternative dispute resolution) or a court decides the amount of deposit to which each party is entitled, the administrator will distribute the deposit amount to the relevant party. The scheme will need to pay the tenant regardless of whether the landlord has transferred the deposit to the scheme as required.

A landlord who retains a deposit in accordance with the terms of the scheme must undertake to reimburse the scheme on the directions of the scheme administrator if the scheme has had to pay out deposit monies to his tenant without receiving the deposit from the landlord.

Schemes must establish and maintain adequate insurance coverage to allow for the scheme to make such payments where a landlord fails to reimburse the scheme. A scheme may require participating landlords to pay contributions towards this or charge any other fees towards the administration of the scheme.

Where a tenant has notified the scheme that they have requested that the landlord pay them all or part of the deposit and this has not been paid to them within 10 days, the scheme must direct the landlord to pay the outstanding amount into a designated account within 10 days of being so directed.

Where either a court decision is made as to how much should be returned to either of the parties or the tenant and landlord have reached a decision, the scheme must pay this amount to the relevant party or parties. This payment should be made within 10 days of receiving notification that a decision has been made.

This payment should be made out of the amount held by the scheme, which has been transferred by the landlord as directed. Where the amount to be paid out is less than the amount held, the scheme must return the balance to the landlord. Where the amount to be paid out is more, the scheme must direct the landlord to pay the difference within 10 days. The scheme must still make the payment within 10 days of receiving notification that a decision has been made.

The designated account must not contain any other monies except deposits and interest accrued on those deposits.

Where a scheme administrator returns a deposit to either tenant or landlord, they should do so with interest added at a rate specified by Government. Any interest additional to this can be retained by the scheme administrator and can be used to fund the administration of the scheme.

A scheme must ensure that the tenant does not wrongly recover sums in respect of the deposit twice, i.e. from a scheme and from the landlord by pursuing a court order directly against them. A scheme can require that it is reimbursed by the tenant for any amounts paid out to them, which they have then recovered from the landlord.

### **Alternative Dispute Resolution**

All schemes (custodial and insurance-based) must make available alternative dispute resolution (ADR) mechanisms so that the parties can try to resolve disputes without resorting to the courts. At present there is very little an aggrieved tenant may do short of taking the matter to court which can be a lengthy and cumbersome process. ADR will not displace the courts or prevent either party from taking the matter to court but it gives the parties another option to try to resolve their dispute.