

Rent Deposits for Residential Tenancies New Rules

This information leaflet gives you introductory guidance to the provisions of the Housing Act 2004 which comes into force in relation to residential tenancies and deposits. If you need legal advice please contact David Baybut in our Commercial department on 01942 774180.

This leaflet:

- details briefly the new rules assisting tenants in regaining their security deposits
- details the basic provisions for custodial schemes
- details the basic provisions for insurance based schemes

Overview

This is a general guide with regards to the new provision of the Housing Act 2004 which comes into force on 6th April 2007. The rules apply to Assured Shorthold Tenancies, therefore, this will apply to the vast majority of residential tenancies. In complex or unusual cases there may be further procedural requirements that are beyond the scope of this leaflet but if this arises in your case we will advise you specifically on these matters.

For years tenants have struggled to regain their security deposits from landlords and managing agents once their tenancies have expired. These new rules will give greater security to the tenants and help facilitate any disputes arising in connection with deposits.

Therefore, from the 6th April 2007 any sum taken by a Landlord as security for the performance of tenant's obligations (regardless of the label it is given) will be subject to the provisions. Basically deposits will have to be put into 1 of 2 schemes, the Landlord has the choice as to which scheme to use.

The two schemes are a) the **custodial scheme**, or b) the **insurance based scheme**. The government has now released details of the three companies who will be running the schemes. Computershare Investor Services plc will run the single custodial deposit scheme. The Dispute Service Limited will run an insurance-based scheme directed primarily at letting agents. It will also run the scheme's ADR service. Tenancy Deposit Solutions Limited will run an insurance-based scheme, sponsored by the National Landlords Association and administered by Hamilton Fraser Insurance, which will be directed primarily at landlords. The Chartered Institute of Arbitrators will be the principal provider of ADR to the scheme.

The Landlord will have 14 days from receipt of the deposit to place it into such a scheme. If the Landlord fails to do so then the tenant can apply to court for the deposit to be repaid to the tenant or paid into a scheme. Failure by the Landlord to arrange for the deposit to be paid into a scheme prior to the court hearing will result in the court ordering the Landlord to **pay 3 times** the deposit amount to the tenant. Furthermore, failure to place the deposit in such a scheme will stop the Landlord being able to regain possession of the property under the "no fault/notice only" ground of the Housing Act 1988. It is therefore essential that Landlords comply with these provisions.

Custodial Scheme

- The landlord pays the amount of deposit into the scheme.
- Within 14 days of receiving a deposit, the landlord must give the tenant the prescribed information about the scheme being used. This is a prescribed printed form which must be used.
- 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.
- If there is a dispute, the scheme will hold the amount until the dispute resolution service or courts decide the dispute.
- The interest accrued by deposits in the scheme will be used to pay for the running of the scheme and any surplus will be paid on the amount refunded. The amount of interest has yet to be set.

Insurance-based schemes

The landlord retains the deposit and pays a premium to the insurer - the key difference to the custodial scheme;

- Within 14 days of receiving a deposit, the landlord must give the tenant prescribed information about the scheme being used and the tenancy. This is a prescribed form.
- 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.
- 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.

Summary

Both schemes will have to offer alternative dispute resolution as a method of resolving any disagreements relating to amount of deposit to be kept/returned, although its use will not be compulsory.

The new rules can only be welcomed as they should reduce the problems with repayments of deposits for both Landlords and tenants. However, as the scheme has not yet been put into practice it remains to be seen whether the situation regarding deposits will improve under the new regulations.

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