

Tenancy Deposit Protection

In an attempt to protect tenants and their deposits from rogue landlords, the government has introduced “Tenancy Deposit Protection” (TDP), under which landlords letting property in England and Wales are required to protect the deposits they take in respect of Assured Shorthold Tenancies (ASTs) throughout the period of occupation.

Any AST deposits taken after 6 April 2007, must be protected by one of three government approved schemes, one custodial and two insurance-based, within 14 days of receipt and the tenant must be informed of the scheme reference within those 14 days. The schemes protect the deposit as an independent third party until its return to landlord/tenant is authorised. When the time comes, if landlord and tenant agree on the amount of the deposit to be returned, the tenant’s share is returned, the landlord retains any remainder and the issue is closed. If agreement cannot be reached “Dispute Proceedings” are implemented by means of an Alternative Dispute Resolution (ADR) or via the courts.

Existing tenancies or those that are rolling-on as *periodic tenancies* are not affected by these regulations. However if a tenancy is *renewed* after 6 April 2007, it will be caught and the deposit (even if taken many years ago) will need to be protected as with a new AST.

The schemes

The custodial scheme is free (although the landlord loses the interest generated by having the deposit in his bank!). The scheme holds and controls the repayment of the deposit. If landlord and tenant cannot agree, the custodian continues to hold the deposit until the ADR or court’s judgement prescribes the allocation; the deposit is then returned as instructed. This scheme best suits businesses and individuals with a modest property portfolio. For more information on this scheme, visit the Deposit Protection Scheme website – www.depositprotection.com

The two insurance schemes both charge fees (their charging structures are slightly different, but both appear better suited to letting agents and major property owners) but the deposit money stays in the landlord’s bank. Unless a disagreement arises, the deposit less the agreed deductions must be returned to the tenant at the end of the occupation. If the parties cannot agree, the landlord must immediately deposit the disputed amount with the insurance company until the ADR or court’s judgement prescribes the allocation, when the deposit is returned as instructed.

For more information on these schemes, visit either the Tenancy Deposit Solutions Limited website – www.mydeposits.co.uk or the Tenancy Deposit Scheme website – www.thedisputeservice.co.uk

Disputes

The ADR approach to resolving disputes is intended to be a quicker and cheaper alternative to court action. Both landlord and tenant have to agree in advance that the ADR decision will be final and to waive their right to court action. The ADR service (free of charge) will then decide on the level of deposit that can be retained by the landlord based on the evidence supplied; the start position will always be that the deposit is returned in full to the tenant, it is the landlord’s responsibility to prove otherwise. The ADR decides and the scheme will distribute on that basis. If landlord and tenant do not agree to use ADR, they must use the court, as was the case previously.

Other options

Some landlords think “outside the box” and no longer take deposits at all. They merely charge “non-refundable booking fees” which are calculated based on their experience of the level of deposits that they have retained in the past to cover necessary repairs. However, whilst this circumvents the need for a deposit scheme it could price them out of the market.

If the deposits you hold are not protected under an approved scheme, the tenant can obtain a court order which will (1) force you to protect the scheme and (2) force you to pay to the tenant 3 times the deposit by way of damages.