

THE TENANCY DEPOSIT SCHEME

A. What is it?

Most private landlords will require a tenant to pay a deposit as security at the outset of a tenancy. The holding of such deposits by or on behalf of landlords is currently unregulated and there is a perception that many tenants have problems with their landlords on this issue. The Tenancy Deposit Scheme (TDS) is being introduced by the Government as from 6 April 2007 to address this.

B. Will it affect me?

If you are a landlord of residential property, it certainly will and you must be aware of your responsibilities. TDS will apply to all private residential tenancies created on or after 6 April 2007. If you, as landlord, take a deposit from your tenant at the outset of such a tenancy, you must comply with the regulations. (TDS will also apply to any deposits currently held under fixed term tenancies created before 6 April 2007 which are renewed on or after that date).

C. How will it work?

The payment of a deposit by a tenant will have to be covered by either of two schemes – the ‘custodial’ scheme or the ‘insurance’ scheme. The Government is selecting suppliers who will administer these schemes.

Under the custodial scheme, the landlord must pay any deposit received from the tenant to the scheme administrator within 14 days. The landlord must supply the tenant with details of the scheme which he is using. At the end of the tenancy, the landlord and tenant must try to agree on how the deposit is to be allocated between them, and inform the scheme administrator, who must then pay the deposit out within 10 working days. Interest will be added to the deposit at a rate to be fixed by the Government.

If the landlord and tenant cannot agree on the allocation of the deposit between them, the scheme administrator will retain it until the dispute is settled. TDS will provide for alternative dispute resolution mechanisms to enable the parties to settle the matter without having to go to Court (although either the landlord or the tenant may decide to take the matter to Court if they wish).

The insurance scheme is slightly more complicated and involves the landlord retaining the deposit and only paying it into a scheme if there is a dispute with the tenant over its allocation at the end of the tenancy. The scheme administrator then retains the deposit until the dispute is settled, as under the custodial scheme. If the tenant is entitled to the return of part or all of the deposit, he is paid out of the scheme itself. However, the landlord must pay an insurance premium to protect the scheme against a failure by him to pay the deposit into the scheme in the event of a dispute. The cost of the insurance premium must be borne by the landlord – he cannot pass it on to the tenant.

These schemes are intended to be self-financing – the scheme administrator will pocket a certain amount of the interest earned on the deposits held in the scheme.

D. What happens if I do not comply?

The implications for a landlord are serious if he does not comply with the requirements of TDS. Firstly, the tenant will be entitled to apply to the Court for an order that the landlord must pay his deposit into a scheme. The Court must also order the landlord to pay a penalty of three times the amount of the deposit to the tenant. The Court will have no discretion to waive this penalty.

Secondly, a landlord who fails to comply with TDS will lose his right to obtain automatic vacant possession of his property by serving two months' written notice after expiry of the fixed term (sometimes referred to as the 'notice only' ground).

It is therefore essential that all private landlords take steps to prepare for the introduction of TDS on 6 April 2007.

E. The Scheme Administrators

The Government has awarded contracts to the following three administrators. As a landlord, you should consider registering your interests with one or more of these in readiness for 6 April 2007. The onus is on you to join a scheme so that you are compliant with the legislation.

1. The Deposit Protection Scheme
www.depositprotection.com
Tel: 0870 707 1 707
2. Tenancy Deposit Solutions Ltd
www.mydeposits.co.uk
3. The Tenancy Deposit Scheme
www.tds.gb.com
Tel: 0845 226 7837