

Tenancy Deposit Protection Scheme

What is it?

The TDPS is a scheme to safeguard the interests of tenants who pay a deposit in respect of their residential accommodation and is designed to ensure that the landlord must return the deposit at the end of the tenancy less only legitimate deductions for matters that the tenant is financially responsible to pay for and to make provision for a dispute resolution procedure to deal with any points that the parties cannot agree. The scheme came into force on the 6th April 2007.

What does it apply to?

The scheme applies to all new assured shorthold tenancies created on or after 6th April 2007 where a deposit is paid by the tenant to the landlord on commencement of the tenancy and all renewed assured shorthold tenancies with a deposit where the renewal, takes place following the effective date of the scheme.

Statutory Basis

The basis of the scheme is in the Housing Act 2004 particularly Schedule 10 to that Act as amended by The Housing (Tenancy Deposit Schemes) Order 2007 and supplemented by two further statutory instruments dealing with prescribed information and interest rates (statutory instruments 2007 numbers 796, 797 and 798).

What is the Scheme?

There are in fact three different schemes under which deposits are dealt with, a government backed custodial scheme and two insurance backed schemes.

Government Backed Custodial Scheme

This scheme is run by ComputerShare Investor Services. They hold the deposit on behalf of the parties. The landlord must pay over any deposit received within 30 days. The scheme is free to use for both landlords and tenants and the tenant will in addition will receive interest on the deposit at the specified interest rate (currently Bank of England base rate less 2.32%).

The scheme is intended to be self-funding by interest earned on deposits over and above that paid to the tenants.

Insurance Scheme - Tenancy Deposit Solutions Limited

Under this scheme the landlord purchases an insurance policy for each deposit taken and is entitled to retain the deposit in his possession, but if he does not deal with it in accordance with TDPS requirements, the tenant is safeguarded by the existence of the insurance policy guaranteeing him the repayment to which he should be entitled.

There are fees for a landlord covering the joining of the scheme, an amount per deposit and an annual renewal fee and apart from other sanctions any landlord who fails to comply with the rules of the scheme may be banned from using it in the future.

There are no costs for the tenant.

Insurance Scheme – The Dispute Services Limited

This scheme is backed by a number of professional and trade associations in the property industry including ARLA, NAEA and the RICS.

Under this scheme the landlord's agent holds the deposit on behalf of the parties and is responsible for insurance premia, usually calculated per business branch of the agency that is registered. Cost to the landlord of using this scheme will vary according to the terms of business of the agent with whom he is dealing.

Tenant's Position

All these TDPS's are free to the tenant and in accordance with the legislation the tenant must be informed by the landlord which tenancy deposits scheme he is using and he must be given certain designated information in each case. The details are set out in the prescribed information order but essentially the tenant is entitled to know where his deposit has been lodged and the rules that apply to it together with any information leaflets pertaining to the operation of that scheme.

What Form Does a Deposit Payment Take?

The deposit must be in money and no other form of collateral security is acceptable for any shorthold tenancy.

Sanctions:

1. Failure to deal with the deposit in accordance with an authorised scheme bars the landlord from giving a Section 21 Notice to bring the AST to an end until such time as the deposit rules have been complied with.

2. The landlord may be ordered to repay the deposit to the tenant or that it should be paid into an authorised custodial scheme. In addition the Court is obliged to order the landlord to pay the tenant a sum equal to 3 times the amount of the deposit within 14 days of the Order.

Absent or Uncooperative Landlords or Tenants

If at the end of the tenancy the landlord cannot contact the tenant in order to finalise an agreement as to the repayment of the deposit he can apply to the scheme administrator for release of all or such part of the deposit as he believes he is entitled to, to make good the damage he has sustained by reason of the tenant's breach of the terms of the tenancy agreement.

If a tenant cannot trace his landlord with a view to securing agreement as to the repayment of the deposit, likewise he can apply to the scheme administrator for a refund of the deposit or the relevant part thereof.

Where the landlord and the tenant have not lost track of each other there is provision for a 14 day notice procedure which specifies the amount which the landlord or the tenant feels should be repaid and allows for repayment of that amount in default of response within the 14 day period, so time is very much of the essence in dealing with deposit refunds.

Dispute Resolution

Although the original text of the Housing Act contemplated the Courts as the forum for dealing with disputes over deposit repayments, the statutory instruments have introduced the use of ADR as a specified means of resolving disputes.