

Tenancy Deposit Protection Scheme

An Explanation of the Key Points



In accordance with the compulsory Tenancy Deposit Protection Scheme (TDPS) requirements of the Housing Act 2004, all Tenancy Deposits paid by a Tenant for an Assured Shorthold Tenancy entered into since 6 April 2007 must, by law, be safeguarded by the Landlord or his Agent under one of the three Schemes authorised by the Government.

THE TDPS HAS TWO MAIN PURPOSES

TO SAFEGUARD TENANCY DEPOSITS PAID IN CONNECTION WITH ASSURED SHORTHOLD TENANCIES

Tenants can be confident that when they pay a deposit they will get all or part of what they are entitled to, provided they have kept the property in good condition and that all the rent is paid.

TO FACILITATE THE RESOLUTION OF DISPUTES ARISING IN CONNECTION WITH SUCH DEPOSITS

Each of the Schemes provide an Alternative Dispute Resolution (ADR) service to deal quickly and fairly with any disagreements which may arise between the Landlord and the Tenant about how much of the deposit should be returned to the Tenant. This is an alternative way of resolving any disputes which is faster and cheaper than having to take court action.

THE TDPS AFFECTS

- All Assured Shorthold Tenancies (ASTs) that commenced or renewed on or after 6 April 2007
- Every Landlord, whether private individual or company, whether a UK resident or living overseas, who lets a property in England or Wales on an AST and takes a deposit for that tenancy
- Every Tenant (including Students) who occupies a property let on an AST and pays a deposit (including where a guarantor pays the deposit on a Tenant's behalf)
- Every Agent who acts for Landlords and receives deposits from Tenants.

THE TDPS DOES NOT AFFECT

- ASTs that commenced before 6 April 2007 and which become Periodic
- Student lets in Halls of Residence
- Tenancies outside the Housing Acts – eg Company Lets, or other Common Law tenancies.

HOW THE TDPS WORKS

- When a Landlord or Agent takes a deposit, he is required to provide the Tenant with Prescribed Information relating to the protection of the deposit including the Scheme the deposit is being safeguarded by, and the legislative provisions that apply. The Tenant is then able, if he wishes, to check with the Scheme Administrator that the deposit is being protected
- The Landlord or Agent must ensure that the deposit is protected and the appropriate information has been provided to the Tenant within 30 days of receiving the deposit. Where an additional deposit is taken during the course of a Tenancy, eg if the Tenant asks to keep a pet for which the Landlord requests an additional deposit, then this must immediately be added to the applicable Scheme and confirmed in writing to the Tenant
- The Housing Act does not allow anything other than money to be used as a deposit. A Landlord seeking to circumvent the regulations by taking an item other than money from the Tenant may be in breach of the law
- At the end of the Tenancy the Landlord and Tenant are required to agree the amount of any money due to the Landlord to compensate for any damage or disrepair to the Property not attributable to fair wear and tear, which is deducted from the deposit held prior to returning the balance to the Tenant. No money can be released to either party until agreement is reached and confirmed in writing
- In the event that agreement cannot be reached, the matter is passed to the Scheme's Alternative Dispute Resolution Service.

LANDLORDS AND AGENTS CAN CHOOSE BETWEEN A SINGLE CUSTODIAL SCHEME AND TWO INSURANCE-BASED SCHEMES.

CUSTODIAL SCHEME administered by **The Deposit Protection Service (The DPS)**.

The Landlord or Agent must hand over the deposit monies to the DPS who holds the money for the duration of the Tenancy in a single designated bank account managed by the Scheme Administrator. This is a free service available to all Landlords and Agents. More information is available at www.depositprotection.com

INSURANCE BASED SCHEME administered by **My Deposits** (previously known as Tenancy Deposit Solutions (TDSL)).

The Landlord or Agent is able to hold the deposit for the duration of the Tenancy on payment of a premium to the insurer/scheme administrator. UK-resident Landlords are able to individually join this scheme however if the Landlord is resident overseas he must use the services of a member Agent who is required to hold the deposit. More information is available at www.mydeposits.co.uk

INSURANCE BASED SCHEME administered by **The Tenancy Dispute Service Ltd (TDS)**

This Scheme is available only to Agents who are members of a recognised regulating body such as ARLA/NAEA/NALS/RICS/Law Society and to Landlords registered with a recognised accreditation body such as RLA/NFRL/NLA. The Landlord or Agent is able to hold the deposit for the duration of the Tenancy on payment of a premium to the insurer/scheme administrator. Rees & Associates hold deposits under this Scheme. More information is available at www.thedisputeservice.co.uk

NON COMPLIANCE PENALTIES

The Landlord and his Agent will be breaking the Law if they do not comply with the requirements of the TDPS.

The Act enables the Tenant to make application to the County Court where either the Landlord or his Agent fails to provide the Tenant with the prescribed information or the Tenant is unable to obtain confirmation from the Scheme Administrator that his deposit is protected. If the court is satisfied that the Landlord has failed to comply with these requirements, or is not satisfied that the deposit is being held in accordance with an authorised scheme, the court must:

- Order the Landlord to:
 - Repay the deposit to the Tenant, or
 - Pay the deposit into the custodial scheme

and

- Order the Landlord to pay to the Tenant (or person who paid the deposit on his/her behalf) compensation in the form of a 'fine' between one and three times the amount of the deposit. The court could also order further costs.

The Act also states that the Landlord or his Agent is prohibited from serving notice requiring possession of the rented property (ie Section 21 Notice) at the end of the Tenancy term if he has received a deposit but has not complied with the requirements of TDPS until after he has rectified the situation.

If at the end of the Tenancy where the Deposit has been safeguarded by one of the TDPS Schemes, the Landlord or Agent for any reason fails to comply with the TDPS rules for the return of the deposit, the Scheme ensures the return of the deposit, or the part of the deposit to which he is entitled, to the Tenant. Defaulting Landlords or Agents will thereafter be prohibited access to an insurance based scheme and will only be able to use the Custodial Scheme.

REES & ASSOCIATES ARE MEMBERS OF THE DISPUTE SERVICE

- As outlined in our Terms & Conditions of Business, Landlords will be charged a fee for the protection of the deposit with The Dispute Service
- The Tenant pays the Deposit to us and we will hold it as Stakeholder under the Scheme administered by The Dispute Service Ltd
- In compliance with the TDPS requirements, we will register the Deposit with The Dispute Service and provide the Tenant with the Prescribed Information and the Certificate of Registration within the required timescale
- In accordance with both Stakeholder and TDPS rules, we cannot release any of the deposit monies to either the Landlord or the Tenant until both parties have reached mutual agreement
- At the end of the Tenancy we will endeavour to obtain agreement from both parties as soon as practicably possible and disperse the agreed amounts to both parties. Typically this is done within a matter of days
- In the event that there is a dispute, we will pass the disputed amount to The Dispute Service for safekeeping until the dispute is adjudicated and resolved by the ADR.

OFFICE CONTACT DETAILS

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OFFICE OPENING TIMES

- 9.00 a.m. to 5.00 p.m. Monday – Friday