

TENANCY DEPOSIT SCHEME RULES

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Department: Dispute Resolution

Date: 17 October 2012



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TENANCY DEPOSIT SCHEME (TDS) RULES

In April 2007, measures were introduced under the Housing Act 2004 which meant that any Assured Shorthold Tenancy (AST) deposit had to be paid, by the landlord, into one of three Government approved holding schemes within 14 days of receipt and the landlord had to provide the tenant with certain prescribed information regarding the deposit within the same time period. The main reasons for introducing such a scheme was to give tenants additional rights and try to reduce the incidents of disputes over tenancy deposits.

Where the landlord failed to comply with the provisions, the tenant could apply to the court, which had the power to order the landlord to repay the tenant's deposit plus a penalty of three times that amount. In addition, the landlord was prevented from seeking possession of the property by Notice under Section 21 of the Housing Act without some breach of the tenancy provisions by the tenant.

Clearly, over the years the courts have tended to be more lenient. For example, there is proven case law that shows that if the landlord complied with the provisions after the tenant commenced court proceedings, no penalty payment would be ordered. In addition, it was also held that a penalty could not be imposed once the tenancy had ended.

In response to the court decisions, the Government introduced an amendment to the tenancy deposit protection legislation in the Localism Act 2011 in order to clarify and reinstate its original intention. These changes included:

1. The deposit must be protected and the prescribed information must be provided to the tenant within 30 days (previously 14 days).
2. If the landlord does not comply with this absolute time limit, the tenant will be able to make a claim from 31 days after the deposit payment if the requirements relating to the protection have not been met. The claim will be for the return of the full sum of the deposit along with a penalty of between one and three times the sum of the deposit, to be awarded at the discretion of the court. This claim can still be made even if the deposit has been protected after 30 days, although it will be within the court's discretion to take the fact that protection has occurred into account when deciding what level of penalty to impose.
3. If the landlord fails to meet the initial requirements to register the deposit on the TDS tenancy database, no Section 21 Notice can be served until either the landlord returns the deposit to the tenant in full or with such deductions as the tenant agrees; or if the tenant has taken proceedings against the landlord for non-protection and those proceedings have been concluded, withdrawn or settled.
4. If the landlord fails to serve the prescribed information, they cannot serve a Section 21 Notice until the prescribed information has been served but this can be more than 30 days after receiving the deposit.
5. Tenants can make an application to the County Court for a penalty award even where the tenancy has ended.



However, these changes are not retrospective. They apply to any deposit received in connection with an AST which the Housing Act 2004 applies to and which was in effect on or after 6 April 2012.

Where a deposit is taken for an AST before 6 April 2012, and it has not already been protected in one of the Government authorised schemes, the landlord or agent will need to have protected the deposit within 30 days as at 6 April 2012. If this has not occurred, the landlord or agent will be subject to a full range of penalties under the amended legislation where the Housing Act 2004 applies.

Essentially, the changes mean that landlords and agents will have more time to protect deposits in one of the Government authorised schemes and more time to provide the tenant with the prescribed information, telling them which scheme the deposit has been protected with.

The prescribed information that has to be provided to the tenant has not changed.

For further information on this or any other property dispute matters, please contact Tamsin Reader of our Dispute Resolution Team on [01306 502317](tel:01306502317).

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