

## **An Introduction to Tenancy Deposit Protection Scheme**

The Housing Act 2004 introduced tenancy deposit protection schemes. In implementing this legislation, the government has sought to increase protection for assured shorthold tenants who have paid deposits to their landlords and provide an effective means of resolving disputes between landlord and tenants. The schemes came into force on 6 April 2007.

Whether or not a deposit will be paid at the start of a tenancy will remain a decision largely for the landlord. If a deposit is taken, the legislation has changed the way landlords must handle deposits and has introduced penalties for failure to comply correctly.

There are two types of scheme, a custodial scheme and an insurance based scheme. It is the landlord's decision which scheme to use. The government has awarded three contracts to companies to run these schemes.

### **How do the schemes work?**

#### **1.The custodial scheme**

Under the custodial scheme, the tenant pays the deposit to the landlord. The landlord then has 14 days to pay the deposit into the custodial scheme. The scheme then pays the money out at the end of the tenancy as agreed by the landlord and the tenant. There is no fee for using this scheme. The deposit earns interest which pays for the administration of the scheme. Any interest left over is then apportioned between landlord and tenant.

There are particular procedures that can be used if one party cannot contact the other or where one party is being un-cooperative.

#### **2.The insurance scheme**

In this case the landlord retains the deposit paid by the tenant and pays a premium to an insurer. There is a fee for using this scheme. This will be used to safeguard the deposit.

### **Disputes**

Both schemes are supported by a free ADR (Alternative Dispute Resolution) service as an alternative to taking the dispute to court. If landlord and tenant agree to use the service, they will be bound by its decision. In the event of a dispute, if the custodial scheme is being used, the scheme will retain the deposit until an agreement is reached through ADR or the courts. If the insurance scheme is being used, the landlord is required to forward the disputed amount to the scheme administrator for safekeeping until the dispute is resolved.

### **Deadlines to be aware of**

Within 14 days of the landlord receiving a deposit in connection with a shorthold tenancy, he must pay the deposit into a scheme and provide the tenant with some “prescribed information”. The list of this information includes the following:

- Name, address, telephone number, fax number, of the scheme administrator and evidence that the deposit has been paid into the scheme; usually the landlord will receive a certificate from the scheme administrator confirming the deposit details.
- Procedures relating to when the deposit may be paid or repaid to the tenant
- What happens if either the landlord or the tenant is not contactable at the end of the tenancy
- Facilities for resolving disputes in relation to the deposit

### **If the landlord fails to comply**

If the landlord fails to protect the deposit by paying it into a scheme within 14 days or does not give the tenant the prescribed information required under the legislation, the tenant can apply for a court order requiring that the deposit be protected or that the information be given.

If the landlord fails to protect the deposit or give the tenant the prescribed information, the court must order the landlord to pay a fine of three times the amount of the deposit.

### **At the end of the tenancy**

If the landlord does not pay the deposit into a scheme and provide the information detailed above to the tenant then, if the tenant does not vacate the property at the end of the tenancy, a landlord will be unable to gain possession of the property by giving 2 months notice under section 21 of the Housing Act 1988.

If you would like any further advice in relation to tenancy deposit schemes please contact the [Contentious Property Department](#).

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May 2007