

The Deregulation Act 2015

Simply making tenancy deposit protection complicated

This briefing is the second in a series looking at the Deregulation Act 2015 (the Act) and its effect on landlords and tenants. Our first briefing, entitled [“The Deregulation Act: Some good, some bad and some very ugly”](#) provided an overview of the main changes made by the Act. This briefing will focus on the changes that have been made to the requirements to protect tenancy deposits paid to landlords or their agents by assured shorthold tenants. Readers should note that the Act has made these changes by amending and adding to the relevant provisions in the Housing Act 2004.

The good news

Simply put, if a deposit is held and a landlord wants to recover possession by serving the “two-month” notice under section 21 of the Housing Act 1988 (“section 21 notice”), the deposit will need to have been protected in a government authorised scheme and prescribed information will need to have been given to the tenant before a valid notice can be served. Whether those steps need to be complied with within a specified timeframe will depend on when the deposit was received and when the tenancy commenced.

Deposits received **before** 6 April 2007, but now held in respect of statutory periodic tenancies that arose **after** 6 April 2007

By way of reminder, a statutory periodic tenancy arises automatically once the fixed term of a tenancy comes to an end and the tenant remains in occupation. A problem for landlords arising out of the [Superstrike v Rodrigues](#) case was that the court held that a landlord who had taken a deposit in relation to a tenancy which had a fixed term that started before 6 April 2007 (being the date the deposit protection requirements came into force), but ended after that date, should have protected the deposit and served information within 30 days of the statutory periodic tenancy arising and a failure to do that meant that no valid section 21 notice could be served on the tenant.

The Act has confirmed that such a deposit does need to be protected, but helpfully for landlords who are keeping a close eye on these developments, they have been given a period of grace until **23 June 2015** to ensure this is done and the prescribed information has been given. A failure to comply with this deadline will prevent the landlord serving a valid notice seeking possession and give rise to a potential claim for compensation by the tenant.

Deposits received **before** 6 April 2007, held in respect of statutory periodic tenancies that arose **before** 6 April 2007

The Act states that such deposits do not need to be protected until the landlord wishes to serve a section 21 notice on the tenant seeking possession. If the landlord wishes to serve such a notice, it will need to protect the deposit and serve the required information on the tenant before serving the notice seeking possession. Landlords who fall within this category are exempt from any of the financial penalties that exist relating to failure to protect deposits and give prescribed information.

Deposits received **after** 6 April 2007, held in respect of a tenancy that commenced **after** 6 April 2007

Landlords and tenants should, by now, know that such deposits need to be protected and prescribed information given. However, the Act confirms that when a fixed term tenancy comes to an end, if the tenant remains in occupation and a statutory periodic tenancy arises, that tenancy should be treated as a new tenancy for the purposes of tenancy deposit protection.

Readers may recall that this approach was taken in the case of [Superstrike v Rodrigues](#), the outcome of which struck fear into the hearts of many landlords and gave rise to the prospect of landlords having to re-protect deposits and re-serve prescribed information every time a statutory periodic tenancy arose. The good news is that the Act states that if a deposit was protected and information was given during the fixed term tenancy, even if done outside of the 30 day time limit, the deposit protection provisions will usually be deemed to have been complied with when the statutory periodic tenancy arises. No further action is required by landlords as they will be deemed to have complied with the protection requirements.

The prescribed information

The Act has confirmed that agent's contact details may be given to tenants in place of the landlord's in the prescribed information in cases where the deposit was protected by the agent on behalf of the landlord.

The less good news

Although the Act has sought to plug the gaps that existed in the law, the result is a patchwork of rules which are difficult to understand (including deadlines for compliance) that may or may not apply depending on when deposits were received. There is a risk that many landlords who could benefit from the grace period that runs until 23 June 2015 will simply not be aware of it.

Others may think they can benefit from the grace period when in fact it does not apply to them. The position remains that those landlords who took deposits after 6 April 2007 and did not protect them within 30 days, cannot serve a valid section 21 notice seeking possession during the fixed term of the tenancy until the deposit has either been returned to the tenant (in full or with agreed deductions) or a court has considered the failure to protect and ruled on what compensation the landlord must pay the tenant.

The Act does not address the potential for long term tenants to claim compensation multiple times if they have had a number of tenancies with the same landlord and the landlord has failed to comply with the deposit protection requirements in respect of each. The financial risk for some landlords is significant, given that the tenant may be entitled to claim compensation of 1-3 times the value of the deposit, plus the return of the deposit in respect of each instance of failure on the part of the landlord. It would seem only a matter of time before this sort of claim is brought before a senior court for determination.

Comment

The Act helps many landlords who were previously in a state of limbo in relation to deposits they may have taken from tenants many years ago but had never protected, or had failed to do so in time. Unfortunately, the way the changes have been effected has resulted in the law relating to tenancy deposit protection being extremely technical and contained in a patchwork of legislation. The 23 June 2015 deadline for those landlords who need to get their house in order is fast approaching. Landlords need to know about the changes that

have been made. It is a concern therefore that, at the time of writing, the version of the Housing Act 2004 at www.legislation.gov.uk has not been updated with the changes introduced by the Localism Act 2011, let alone the Deregulation Act 2015.

A landlord who wishes to piece together the current position by looking at the legislation itself faces the unenviable task of finding, reading and trying to understand three Acts of Parliament and how they interact with each other. Parliament can at least be content with the fact that the final jigsaw of tenancy deposit protection legislation, once pieced together, now deals with most of the uncertainties and loopholes that have worried landlords and tenants and troubled the courts consistently over recent years.

Readers who have got this far may therefore delight in knowing that in the coming months we plan to publish further briefings covering the new Regulations that are being introduced by the oddly named Deregulation Act. We will be look at the curbing of retaliatory evictions and some new hurdles for landlords to negotiate before they can serve valid section 21 notices seeking possession, both of which are due to be introduced later this year, by which time landlords might have sorted out their deposit troubles, or identified new ones.

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