

# Tenancy Deposits

**Calendar Day** or **day** means any day of the year, including Saturdays, Sundays and bank holidays.

**“Relevant Person”** means person who paid the deposit or any part of it on behalf of a tenant.

**“Stakeholder”** means a person or body who holds the deposit at any time from the moment it has been paid by the tenant until its allocation has been agreed by the parties to the tenancy agreement, determined by the ADR process, or ordered by the court.

**“Scheme”** means an authorised tenancy deposit protection scheme (set up in accordance with the Housing Act 2004 and operated under a service concession agreement with the government) administered by The Dispute Service Limited.

**“Statutory Time Limit”** means the time limit set out in the Housing Act 2004 (as amended) in which the initial requirements of the Scheme must be met, and prescribed information must be provided to the Tenant and any Relevant Person.

**“Working Day”** means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 or any customary or public holiday in England and Wales.

## 1. Assured Shorthold Tenancy Deposits

1.1 If a tenant pays a deposit in connection with an assured shorthold tenancy (“AST”) the deposit must, from the moment it is received, be dealt with in accordance with a government-authorised tenancy deposit protection scheme.

1.2 The landlord must give the tenant and any Relevant Person ‘prescribed information’ about the deposit and comply with the initial requirements of an authorised scheme within the Statutory Time Limit.

1.3 We are a member of the Tenancy Deposit Scheme, which is a government-authorised tenancy deposit protection scheme, administered by:

The Dispute Service Limited  
1 The Progression Centre  
42 Mark Road  
Hemel Hempstead  
HP2 7DW

Phone: 0300 037 1000  
Web: [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com)  
Email: [deposits@tenancydepositscheme.com](mailto:deposits@tenancydepositscheme.com)

1.4 If we receive an AST deposit on your behalf, we will serve the prescribed information and comply with the initial requirements of the Tenancy Deposit Scheme on your behalf, unless you give us prior written instructions to the contrary before we receive the deposit.

1.5 If you do not want us to protect the deposit on your behalf, it will be your responsibility to protect it as required by law. A valid notice seeking possession under s21 of the Housing Act 1988 cannot be served on a tenant whose deposit is not protected. **A tenant or any**

**Relevant Person may apply through the courts for compensation of at least the amount of the deposit, and up to three times the deposit,** if the landlord (or someone acting on the landlord's behalf):

- a) fails to give prescribed information within the Statutory Time Limit; or
- b) fails to comply with the initial requirements of an authorised scheme within the Statutory Time limit; or
- c) notifies the tenant or Relevant Person that the deposit has been protected in a scheme, but the tenant or Relevant Person cannot obtain the scheme's confirmation that the deposit is protected.

1.6 If you do not give us written instructions that you want to make your own arrangements for deposit protection, we will hold deposits relating to your properties under the terms of the Tenancy Deposit Scheme. We must comply with the rules of the Scheme, and this means that we will not be able to act on your instructions with regard to the deposit if those instructions conflict with the Scheme rules.

1.7 The Scheme rules are available to view and download from [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com). A very important point for you to bear in mind is that we must hold the deposit as "stakeholder". This means that we can only pay money from the deposit if:

- a) both landlord and tenant (and any Relevant Person) agree; or
- b) the court orders us to do so; or
- c) the Tenancy Deposit Scheme directs us to do so.

## **2 During the tenancy**

2.1 We will hold the deposit as stakeholder in our client account (separate from the money we use to run our business).

2.2 Interest earned on the deposit will belong to the person entitled to it under the tenancy agreement.

2.3 If the Tenancy Deposit Scheme directs us to send the deposit to them, we must do that within 10 days of receiving their direction. The Scheme will not normally direct us to send them the deposit unless there is a dispute about how it is to be paid at the end of the tenancy.

### **Where there is NO dispute about the deposit at the end of the tenancy**

2.4 At the end of an AST we will liaise with you to ascertain what (if any) deductions you propose to make from the deposit, or have already agreed with the tenant. [We will help you to try and resolve any areas of dispute within a reasonable time obtaining quotations, estimates or arranging contractors on your behalf in accordance your instructions].

2.5 Once you and the tenant have agreed how the deposit should be allocated, we will ask you both to confirm your agreement in writing. We will then pay the deposit according to what you have agreed, within 10 days of receiving confirmation of agreement from you and the tenant(s). We cannot pay until we have the tenant's agreement. If you have joint tenants, all of them must agree.

### **Where there IS a dispute about the deposit at the end of the tenancy**

- 2.6 You must use reasonable efforts to reach a sensible resolution to the dispute as soon as practicable after the tenancy ends.
- 2.7 A tenant can ask us to repay the deposit at any time after the tenancy has ended. You must agree to us releasing promptly any part of the deposit that does not need to be held back to cover breaches of the tenancy agreement. We will take your instructions at the time regarding the amount to be withheld.
- 2.8 If the tenant asks us to repay some or all of the deposit, and we do not do so within 10 days from and including the date of the tenant's request, the tenant can notify the Tenancy Deposit Scheme. The Scheme will then direct us to pay the disputed amount to the Scheme. We have 10 days, from and including the date we receive the Scheme's direction, to send in the money.
- 2.9 If we protect a deposit with the Scheme on your behalf, **you hereby authorise us to pay to the Scheme as much of the deposit as the Scheme requires us to send.** We will contact you to keep you informed, but we will not need to seek your further authority to send the money to the Scheme.
- 2.10 The Tenancy Deposit Scheme will review the tenant's claim and decide whether it is suitable for independent alternative dispute resolution. Usually, this will take the form of adjudication, but it may involve assisted negotiation or mediation. "Alternative" in this context means an alternative to court proceedings. It is intended to be a faster and more cost-effective way of resolving disputes. The Scheme does not make a charge to landlords or tenants for using the alternative dispute resolution service if it relates to an AST.
- 2.11 If the tenant's claim is referred for alternative dispute resolution, we and you will be invited to accept or contest the claim. You must notify the Scheme whether you agree to submit the dispute for alternative dispute resolution within 10 Working Days from (but not including) the date of the Scheme's communication to you. **If you do not respond to the Scheme by the deadline, you will be treated as having given your consent to alternative dispute resolution.**
- 2.12 Agents and landlords are permitted to refer a dispute about a deposit to the Tenancy Deposit Scheme. If you or we refer a deposit dispute to the Scheme, the Scheme will contact the tenant to confirm whether the tenant will agree to alternative dispute resolution. If there are joint tenants, all the joint tenants must agree. A tenant who does not reply to the Scheme is NOT deemed to consent to alternative dispute resolution. **If the tenant (or all joint tenants) do not agree to alternative dispute resolution, and do not agree to the deposit deduction(s) you claim, you will need to begin court proceedings if you wish to pursue your claim.**
- 2.13 If the parties agree to adjudication, the adjudicator's decision is final and there is no right of appeal. Further information about adjudication is available free to download from [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com).
- 2.14 The Tenancy Deposit Scheme will pay the disputed amount to the person(s) entitled within 10 days beginning on the date the Scheme receives notice of (a) the adjudicator's decision or (b) an order from the court that has become final or (c) an agreement being reached between you and the tenant(s).
- 2.15 If you order any work to be done at the property before a dispute has been resolved, you do so at your own risk. There is no guarantee, if you incur expense, that a dispute will ultimately be resolved in your favour.

### **3 Consent to use personal information**

- 3.1 When you agree to use our services, you agree that we may use information you give us, including information about yourself, for the purposes of performing our obligations to you.
- 3.2 You agree that we may supply such information as is reasonably required to the Scheme. You agree that the Scheme, or the government department responsible for the Scheme, may contact you from time to time to ask you to participate in surveys. If at any time you do not wish the Scheme to contact you for that purpose, you should write to the Scheme as explained in the Scheme Leaflet (see [www.tenancydepositscheme.com](http://www.tenancydepositscheme.com)).

### **4 Our duty to provide correct and complete information**

- 4.1 When you agree to use our services, you guarantee that all the information you provide to us is complete and correct to the best of your knowledge and belief. You agree to inform us immediately if it comes to your attention that any information was incorrect.
- 4.2 If we suffer any loss or incur any cost because information you have given us is or was incomplete and/or incorrect, you agree to pay us the amount necessary to put us in the position we would have been in if the information had been complete and correct. This clause does not relieve us of our own obligation to use reasonable skill and care in providing our services to you, or to take reasonable steps to keep our losses and costs to a minimum once we realise that there is a problem.

### **5 Where the tenancy is not an AST**

- 5.1 The deposit does not have to be protected by law. However, the Tenancy Deposit Scheme will make its independent alternative dispute resolution service available to you as our client, because we are a member of the Scheme.
- 5.2 If a dispute arises you, we or the tenant will contact the Scheme. Then:
  - a) the Scheme will propose what they consider to be the most effective way of resolving the dispute (assisted negotiation, mediation, adjudication or arbitration);
  - b) you, we and the tenants must consent in writing to the proposed method if we all want to proceed (if we don't, the options are to negotiate or litigate);
  - c) the parties will have to pay a fee of £500 + VAT (or such other minimum fee as the Scheme may set from time to time) or 10% of the deposit plus VAT, whichever is the larger amount.
- 5.3 The Scheme will not start the dispute resolution process until all parties have agreed in writing to use the Scheme and paid the applicable fee and the disputed deposit to the Scheme.

## **6 Where you instruct us that you do not want us to protect an AST deposit**

- 6.1 If the deposit relates to an AST and you decide to hold the deposit yourself, you must tell us before the tenancy agreement is signed. We will notify you of the date we receive the deposit and aim to transfer the deposit to you within 5 days of receiving it. By law you must then register the deposit with an authorised tenancy deposit protection scheme within 30 days of the date we received it. You must also give the tenant(s) and any Relevant Person 'prescribed information' about the deposit. If you do not do both these things within 30 days of us receiving the deposit, the tenant or any Relevant Person can take legal action against you. The court can make an order stating that you must pay the deposit back to the tenant, or lodge it with the custodial scheme run by the Deposit Protection Service. The court will then also order you to pay compensation to the tenant of between one and three times the amount of the deposit.
- 6.2 By law, you may not serve a notice seeking possession under section 21 of the Housing Act 1988 notice until you have served the prescribed information. If you have not complied with the initial requirements of an authorised tenancy deposit protection scheme, you cannot serve a s21 notice until you have returned the deposit (or the agreed balance of it) to the tenant or court proceedings relating to the return of the deposit have been disposed of.
- 6.3 If you instruct us that you do not want us to protect an AST deposit, we shall not be liable to you for any loss suffered or cost incurred if you fail to comply with your obligations to protect the deposit and give prescribed information. You must pay us for any loss or inconvenience suffered or cost incurred by us if you fail to comply with those obligations. This clause will not apply if the reason for your failure is because we failed to send you the deposit within 20 days of receiving it.

## **7 Joint Landlords**

- 7.1 If there is more than one landlord, any of you will be able to participate in alternative dispute resolution. TDS does not accept liability to any one or more joint landlords for acting on the instructions of any other joint landlord. TDS does not accept directions from joint landlords to deal only with instructions agreed unanimously by joint landlords. If you want all decisions to be made jointly, this is something that should be agreed between the landlords. It will then be a matter for the landlords to resolve among themselves if one or more of them have not complied with that agreement.