

Tenancy Deposit Scheme

The Tenancy Deposit Scheme came into force on the 6th April 2007. If you are not protecting your tenant's deposit, you will be ordered to repay three times the amount to the tenant. The following article will explain how you can protect your tenant's deposit and how to resolve any disputes that may arise at the end of a tenancy.

What are Tenancy Deposit Schemes?

The fundamental purpose of the schemes is to allow tenants to get all or part of their deposit back when they are entitled to it. This, in turn, encourages both tenants and landlords to agree on the condition of the property at the start of the tenancy, which makes any subsequent disputes much easier to resolve. Knowing that a deposit is protected can also encourage tenants to take better care of the property they are renting.

Landlords can choose between an **insurance-base tenancy deposit protection scheme** and a **custodial scheme**. Whichever scheme you choose, it comes with a free dispute resolution service.

The Insurance-based scheme:

- the tenant pays the deposit to the landlord
- the landlord retains the deposit and pays a premium to the insurer (this is the main difference between this and a custodial scheme)

Within 14 days of receiving the deposit from the tenant, the landlord (or agent) must inform the tenant how their deposit is protected. The details must include:

- the contact details of the chosen tenancy deposit scheme
- the contact details of the landlord (or agent)
- the methods for applying for the release of the deposit
- an explanation of the purpose of the deposit
- the steps to take if there is a dispute about the deposit

Then, at the end of the tenancy, one of three things will happen:

- if an agreement is reached about how much deposit should be returned, the landlord (or agent) will return the agreed amount
- if there is a dispute, the landlord must deliver the amount in dispute to the scheme for safekeeping until the dispute is resolved
- if the landlord fails to comply for any reason with repayment or delivery of the sum to the scheme, the insurance arrangements will ensure the tenant receives the portion of the deposit to which they are entitled

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There are two insurance-based schemes:

- **Tenancy Deposit Solutions Ltd (TDSL)** - a partnership between the National Landlords Association and Hamilton Fraser Insurance.
- **The Tenancy Deposit Scheme (TDS)** - an insurance-backed deposit protection and dispute resolution scheme run by The Dispute Service.

The Custodial scheme:

- the tenant pays the deposit to the landlord (or agent)
- the landlord (or agent) then pays the deposit into the scheme

Within 14 days of receiving the tenant's deposit, the landlord (or agent) must inform the tenant how their deposit is protected. The details must include:

- the contact details of the chosen tenancy deposit scheme
- the contact details of the landlord (or agent)
- the methods for applying for the release of the deposit
- an explanation of the purpose of the deposit
- the steps to take if there is a dispute about the deposit

Then, at the end of the tenancy, there are two options:

- if an agreement is reached about how much deposit should be returned, the scheme will return the deposit, allocated to landlord and tenant as agreed
- if there is a dispute, the scheme will hold the deposit until the dispute resolution service or courts make their decision

It is worth noting that any interest accrued by deposits in the custodial scheme will be used to pay for its running. At the end of the tenancy, any surplus will be offered to the tenant, or, when the tenant isn't entitled to it, to the landlord.

The **Deposit Protection Service** (The DPS) is the only custodial deposit protection scheme. It is free to use and open to all landlords and letting agents. The service is funded entirely from the interest earned from deposits held. Online transactions are available to landlords and agents who register, although paper forms are also available if internet access is difficult. The scheme is supported by a dedicated call centre and an independent dispute resolution service.

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Protecting your property

In the case of disputes a **comprehensive inventory of your property is essential** if you hope to retain all or part of a tenant's deposit to make good damages. Compiling **an inventory that contains not only a full list of your property's contents but also the condition of each of its fixture and fittings can be a time-consuming process**. An inventory forms part of the contract between tenant and landlord and must contain sufficient detail to remove all uncertainty when it comes to any discussion of missing or damaged property or contents.

Although the law does not stipulate that an inventory must be made, with all dispute resolution hearings depending on paperwork, it is unlikely that a landlord would win any dispute without being able to show a signed and agreed inventory. A letting agent would be exposing a landlord to financial risk were they to allow a tenancy to begin without the production of an inventory.

Given the importance of the inventory and the time and skill required to create the paperwork that will present your best chance of winning any dispute, you will find that **most letting agents will recommend using an independent inventory company**. These companies perform the task many times a day and the best of them are aware of what exactly is needed in terms of description to ensure that there is no ambiguity when it comes to agreeing the condition of a property.

Moving in

At the commencement of the tenancy, the tenant should be asked to sign the inventory. This signals agreement to the condition of the property. Your inventory company will meet the tenant at the property and walk them through a check-in, which lets the tenant examine the property in the light of the inventory.

During the tenancy

For long-term lets it is usually advisable to have your agents or inventory company perform periodic inspections. This can alert you to possible damage before it becomes too serious or to necessary repairs that must be done as part of your responsibility as a landlord.

Moving out

At the end of tenancy, the inventory company will check the condition and contents of the property against the original inventory and agreement. The landlord (or agent) then agrees with the tenant the amount of deposit to be returned. This sum must be repaid to the tenant within 10 days unless there is a dispute.

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Resolving disputes

Should a dispute arise about the amount of deposit to be returned, the protecting scheme will involve the **Alternative Dispute Resolution** (ADR) service. If both landlord and tenant agree to use the ADR to resolve the dispute, they are agreeing to be bound by its decision.

In the case of a custodial scheme, the scheme will continue to hold the amount until the ADR or the courts come to a decision.

In the case of insurance schemes, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. The scheme administrator will be responsible for returning the final amounts to landlord or tenant in accordance with the decision of the ADR or the courts.

If a landlord fails to transfer the disputed amount into the scheme, the scheme will pay the amount due to the tenant decided by the ADR or the courts and the scheme will proceed to recover the money from the landlord.