



Housing Act 2004 Guidance

Tenancy Deposit Protection Schemes



A Guide for Landlords and Tenants

▶ What are Tenancy Deposit Protection (TDP) Schemes?

TDP is a simple process which ensures tenancy deposits are safeguarded against disputes. This is a legal requirement for landlords and will be beneficial for both landlords and Tenants.

TDP will apply to all new Assured Shorthold Tenancies (ASTs) in England and Wales entered into after 6 April 2007, where a deposit is taken. From this date, tenants should ask their landlord for details of the scheme they are using when signing a new tenancy agreement.

N.B. Reference to 'landlord' includes any other person that takes the deposit on the landlord's behalf. i.e. a letting agent.

Renewal of a contract after 6 April 2007

If the tenant decides to remain in their existing rented property beyond the initial fixed term of six months, how the deposit is treated will depend on how the tenancy is continued:

Periodic tenancy - i.e. the tenancy continues with no new agreement – TDP will not apply, as no new AST will have been created.

Replacement tenancy - i.e. a new AST is created between the same landlord and tenant for the same property on substantially the same basis. In this case, TDP will apply to the initial deposit paid.

Tenancy Deposit Protection Schemes will provide:

- good practice in deposit handling. When a tenant is entitled to get their deposit back, they can be assured that this will happen.
- an Alternative Dispute Resolution service (ADR). This will avoid disputes going to court and will encourage tenants and landlords to have clear agreement on the condition of the property with, for example, the use of inventories.

TDP for Tenants

On signing a new tenancy agreement, tenants should ask the landlord how their deposit will be protected. The landlord must provide the contact details of the scheme protecting the deposit.

TDP for Landlords

Landlords will be confident that if a tenant disputes the amount of deposit returned, that this can be resolved through the ADR.

▶ How will Deposit Protection Work?

The landlord chooses between two types of scheme: a custodial scheme and an insurance-based scheme. These are both free of charge to landlords and tenants and are described in the table below.

| Custodial Scheme | Insurance-based Schemes |
|---|---|
| The landlord – not the tenant – will have the option to choose which scheme to use to safeguard the deposit. | |
| The tenant pays the deposit to the landlord. | |
| The landlord pays the deposit into the scheme. | The landlord retains the deposit and pays a premium to the scheme operator. |
| Within 14 days of receiving a deposit, the landlord must give the tenant information (set out in legislation) about the scheme being used. The tenant can contact the scheme to confirm this. | |
| At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they will tell the scheme operator who returns the deposit, divided in the agreed way. | At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord can return that amount of the deposit to the tenant on the last day of the tenancy. |
| The deposit must be returned within ten days of the landlord and tenant agreeing on how the deposit should be divided. | |

Deposits held by the custodial scheme will accrue interest which will be used to pay for the running of the scheme; any surplus will be paid to the tenant. Where the tenant does not want to receive interest it will be paid to the landlord.

▶ Who are the Scheme Operators?

The Government has awarded contracts to three companies to run Tenancy Deposit Protection Schemes from 6 April 2007. These are the only three authorised schemes currently available.

| Custodial Scheme | Insurance-based Schemes | |
|--|---|---|
| <p>Computershare Investor Services PLC will run the custodial scheme, called The Deposit Protection Service, with the Chartered Institute of Arbitrators providing the Alternative Dispute Resolution (ADR) service.</p> | <p>The Dispute Service Limited will run an insurance-based scheme directed primarily at letting agents. It will also run the scheme's ADR service.</p> | <p>Tenancy Deposit Solutions (a consortium of the National Landlords Association and Hamilton Fraser Insurance), will run another insurance-based scheme, directed primarily at landlords. The Chartered Institute of Arbitrators will provide the ADR service.</p> |
| <p>Further details of the schemes are available from the providers explaining exactly how their schemes will operate, and how landlords can register to join their schemes to protect deposits. Please note, some will offer discounts for early registration.</p> | | |
| <p>☎ 01223 233 882 Hillary Cannon (temporary number until April) www.depositprotection.com</p> | <p>www.tds.gb.com</p> | <p>☎ 08456 34 34 04 www.mydeposits.co.uk</p> |

▶ What is the Alternative Dispute Resolution (ADR) Service?

To avoid disputes having to go to court, each type of scheme will be supported by an ADR service which is free of charge for landlords and tenants. The use of this will not be compulsory but tenants and landlords can agree to use the service and therefore agree to be bound by its decision with no recourse to the courts. Disputes will only go to the courts if the landlord and tenant do not agree to use the ADR service. As the resolution of disputes will be impartial and evidence based, an inventory agreed at the start of the tenancy will be required for referral to the ADR service.

Please see our **Inventory and Guidance** which you can download from www.eastmidlandsdash.org.uk

▶ What Happens if There is a Dispute?

| Custodial Scheme | Insurance-based Schemes |
|---|--|
| <p>The scheme will hold the disputed amount until fair resolution is reached by the ADR service or courts. The scheme operator will then divide the disputed amount in accordance with the decision.</p> | <p>The landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. The scheme operator will divide the disputed amount in accordance with the decision made by the ADR service or court.</p> <p>If the landlord fails to comply with the insurance arrangements, the scheme itself will pay the amount due to the tenant in accordance with the decision made by the ADR service or court. The scheme will then recover the money from the landlord.</p> |
| <p>The deposit must be returned within ten days following the ADR/court decision.</p> | |
| <p>Where the tenant or landlord does not agree to resolve the dispute through ADR or court and/or a landlord does not agree to release part or all of the deposit, the dispute will automatically be resolved by the ADR service.</p> | |

▶ Does TDP apply to Students?

Where student accommodation is let under an AST, the deposit must be safeguarded. For international tenants, deposits will be returned into foreign bank accounts for a charge.

▶ What Happens if the Deposit has not Been Protected?

With regard to tenants:

If a tenant moves out of the property and then discovers that their deposit has not been protected, the tenant will need to apply to a court to order the landlord to repay the deposit. In order to avoid this situation, tenants should make sure that their landlord has given them the information of the scheme being used within 14 days of paying the deposit. They should confirm that the deposit is safeguarded by contacting the scheme.

With regard to landlords:

Currently, a landlord can obtain an order for possession of an Assured Shorthold Tenancy at any point after the first six months of the tenancy, providing any fixed term has expired and the landlord gives the tenant at least two months' written notice (Under Section 21 of the Housing Act 1988). This is known as 'notice-only'. However, under TDP, if the deposit has not been safeguarded and the prescribed information passed on to the tenant within 14 days of the landlord receiving the deposit, the landlord is unable to use 'notice only'.

Where the court believes that the landlord has failed to comply with the TDP requirements, the court must:

- order the landlord to repay the deposit within 14 days; **or**
- order the landlord to pay the deposit to the custodial scheme.

The court must also order the landlord to pay a fine of three times the deposit to the tenant within 14 days.

▶ Further Enquiries:

- Representative bodies, for example Landlords Associations, the NUS or Citizens Advice Bureau
- TDP Scheme Operators (see over)
- Communities and Local Government – 0207 944 4400, www.communities.gov.uk/tenancydeposit



Decent And Safe Homes (DASH) East Midlands is a project funded by the Government Office of the East Midlands. We work with landlords, tenants and Local Authorities to raise standards in housing.

Further information on DASH, its associates, projects and successes can be found by visiting our website at www.eastmidlandsdash.org.uk or by calling 01332 256409.

Issued February 2007

Also Available:

- Housing Act 2004 Guidance - Amenities and Space. A Landlords Guide
- Housing Act 2004 Guidance - The 29 Hazards. A Landlords Guide
- Housing Act 2004 Guidance - Houses in Multiple Occupation - Licensing in the East Midlands
- Housing Act 2004 Guidance - Local Authority Enforcement Options. A Landlords Guide
- The Decent Homes Standard. A Landlords Guide

DASH makes every effort to ensure the currency, accuracy and reliability of the information contained in this document. However, DASH and its employees will not be held responsible for any form of loss or misinformation occurring due to the use of or reliance upon the information provided in this document. This document is provided 'as is' and DASH makes no representations or warranties about the accuracy, completeness or suitability for any purpose of the information and images contained within. This document could include technical or other inaccuracies or typographical errors.