



► Members Newsletter

Autumn 2007

Tenancy Deposit Solutions Update

Since launch in April 2007, Tenancy Deposit Solutions has been an outstanding success. Thousands of landlords and agents have joined the Scheme and are protecting deposits. More are joining every day.

The Scheme has not been without its initial problems. We are ironing them out as soon as we can, and we thank you for your feedback, patience and support.

We have listened to landlords and agents and are making changes to the way we do business with you. We have been in constant negotiation with the government with a view to simplifying some aspects of

tenancy deposit protection, based on our experience since launch.

As a result we have managed to obtain agreement for a number of changes to our procedures.

These changes will require a re-print of the Scheme Rules. This takes time. Rather than wait for a re-print, however, we have decided to introduce some of the changes now as we believe they will ease a number of your concerns in your dealings with the Scheme.

This Newsletter outlines the changes which are effective immediately. When the new Rules detailing the specific changes are published, we will forward a copy to you.



CHANGE ONE

Prescribed information and the role of Tenancy Deposit Solutions

There has been some confusion over the precise information that you are required by law to provide to tenants in order to comply with the law on tenancy deposit protection.

The legislation requires the landlord to provide the information detailed in *The Housing (Tenancy Deposits) (Prescribed Information) Order 2007*. An extract from this document is included in this newsletter.

Government-authorised tenancy deposit protection schemes such as Tenancy Deposit Solutions are required by law only to protect the deposit and provide confirmation of the protection to the landlord (or agent). As a secondary requirement, schemes are required to provide an Alternative Dispute Resolution (ADR) service to assist in the resolution of disputes relating to the return of the deposit at the end of a tenancy. For the time being, ADR services must be free to landlords (or agents), tenants and any relevant party.

However, the landlord (or agent) is responsible for providing to the tenant all information relating to the protection of the deposit. As a member of Tenancy Deposit Solutions, once you

have protected a deposit you will be issued with a Deposit Protection Certificate (DPC). You should sign the DPC and ask the tenant to check it and sign it. You should then pass the original copy of the DPC to the tenant to retain as proof of protection and to provide guidance to them on how to proceed at the end of the tenancy if they wish to raise a dispute.

You should also keep a copy of the DPC for your records. The DPC, together with the leaflet *Information for Tenants* and the leaflet *Scheme Rules 'Quick Guide' for Landlords (or Scheme Rules 'Quick Guide' for Agents)* will satisfy the requirements of *The Housing (Tenancy Deposits) (Prescribed Information) Order 2007*, with the following exceptions:

- Clause 2 (1) (g) (vi). This clause relates to the circumstances in which you will retain part or all of the deposit. This information should be included in the tenancy agreement, and you should point out the relevant passages to the tenant. Tenancy Deposit Solutions cannot assist you in this matter.
- Clause 2 (1) (g) (vii). This clause requires both you and the tenant to sign the DPC.

CHANGE TWO

To whom Tenancy Deposit Solutions will send the Deposit Protection Certificate

If you protect a deposit by telephone, we will mail you the DPC. If you protect the deposit online we expect you to download the DPC from our website. In either case, as stated above in Change One, you should sign the DPC and pass the original to the tenant who should also check it for accuracy, sign it and keep it as a record that the deposit has been protected.

Until now Tenancy Deposit Solutions has sent a further copy of the DPC to your tenant and to any other relevant person or organisation with an interest in the deposit. This procedure has however relied on the landlord (or agent) providing us with accurate, up-to-date information when protecting the deposit. Owing to uncertainty over which alternative address to supply to us, and to inconsistency in the data recorded, many DPCs were either not being received by tenants (and other relevant parties), or were being returned to us. We have therefore decided to discontinue sending duplicate DPCs to tenants and other interested parties.

We stress, however, that the landlord or agent remains responsible for ensuring that the tenant is provided with the DPC.

CHANGE THREE

Information contained on the Deposit Protection Certificate

We have made various changes to the information printed on the Deposit Protection Certificate.

Landlord contact details

Many landlords and agents have expressed concern about the requirement to display landlords' contact details on the DPC, especially if an agent holds the deposit on behalf of a landlord.

If an agent protects a deposit on behalf of a landlord, only the contact details of the agent will be shown on the DPC. The landlord's details will not be shown. However, we will still collect the landlord's details when protecting the deposit. This is because we ultimately hold the landlord responsible for the deposit and will need to contact them if for any reason the agent fails at the end of the tenancy to lodge a disputed amount with us when we request it.

If a landlord protects a deposit directly with the Scheme, their contact details will continue to be shown on the DPC.

Earliest contractual end date of tenancy

At the point that you protect a new deposit, whether you do this online, by telephone, or by sending to us the Deposit Protection Request form, you will now be requested to advise us of the earliest contractual end date of the agreement. This information will now be included on the DPC.

CHANGE FOUR

Clarification on when to protect a deposit

There has been confusion over when a deposit must be protected with our Scheme.

The following guidance is given on the circumstances in which a deposit is required to be protected. Put simply, you need to purchase a protection at the start of every new assured shorthold tenancy (AST) entered into with the tenant, whether you continue to hold the original deposit or take a new deposit.

You do not need to purchase a new protection in the following circumstances:

- When a fixed-term agreement ends and it automatically becomes a statutory periodic tenancy. This occurs if you do nothing at the end of the fixed term and allow the agreement to run on from one rent period to the next on the same terms. The original protection you made at the start of the fixed term agreement will remain valid until either you return the deposit to the tenant or you issue the tenant with a new fixed-term AST agreement.
- If you propose in writing, and have received agreement from the tenant, of a change in the rent payable without the replacement of the existing tenancy agreement. If possible, you should propose the rent change by using the form 'Landlord's Notice Proposing a New Rent Under an Assured Periodic Tenancy of Premises Situated in England' (or the equivalent form for Wales). These forms can be obtained from law stationers or trade organisations, or they can be downloaded from the Communities and Local Government website (or National Assembly for Wales website). Again, the original protection you made at the start of the fixed term AST will remain valid until either you return the deposit to the tenant or you issue the tenant with a new fixed term AST agreement.
- If you propose in writing, and have received agreement from the tenant, a change of terms without the replacement of the existing AST agreement. Once more, the original protection you made at the start of the fixed term will remain valid until either you return the deposit to the tenant or you enter into a new fixed-term agreement with the same tenant.

Remember, if you do issue the tenant with a new fixed-term AST agreement you must unprotect the original deposit and purchase a new protection.

CHANGE FIVE

Overseas Landlords

Tenancy Deposit Solutions is not designed to enable landlords who are permanently resident outside the UK (and the Channel Islands) to protect deposits with the Scheme. This is a restriction imposed on us by our insurers rather than our not wishing to accommodate these landlords.

The reason for this is that Tenancy Deposit Solutions ultimately holds the landlord responsible for the protection of any deposit taken from the tenant. If the landlord (or agent) fails for any reason to lodge a disputed amount with us in the event of a dispute, our insurers require us to be able to have recourse against that landlord. This is often much more difficult and costly, or even impossible, if the landlord is not resident in this country.

However, in clarifying their interpretation of this restriction, our insurers have advised that landlords who are members of the armed forces and stationed outside the UK, or landlords who are temporarily working abroad but ordinarily resident in the UK or the Channel Islands, are not deemed to be overseas landlords. Such landlords can therefore join the Scheme and protect deposits in the usual way, and agents can act on their behalf.

CHANGE SIX

Clarification on Joint and Several Tenancy Agreements

Our Scheme deals with Joint and Several tenancies on the basis that you will nominate (and obtain agreement from all parties subject to the tenancy agreement) a Lead Tenant.

Apart from you, the Lead Tenant is the only party to the tenancy agreement who can deal with us in matters relating to the deposit, including Alternative Dispute Resolution. It is your responsibility to supply us with any changes to the details of a Joint Tenancy Agreement including, but not exclusively, changes to the parties making up a Joint and Several Tenancy Agreement, changes of the Lead Tenant, and contact details.

You must also make the parties to the Joint and Several Tenancy Agreement aware of the responsibilities of the Lead Tenant, emphasising to them that this does not affect their legal rights, obligations or responsibilities.



Alternative Dispute Resolution (ADR)

A number of tenants have complained to the Scheme that their landlord (or agent) has failed to return their deposit to them after leaving their tenancy address. Further investigation reveals that in some instances the tenant has abandoned the tenanted property part way through the period of the agreement, owing rent and money for repairs and reinstatements.

On these occasions we have pointed out to the complainants that the Scheme only provides Alternative Dispute Resolution (ADR) at the end of the contractual tenancy agreement period, not for disputes arising out of a tenant's failure to observe the terms of the AST agreement.

We refer to the Landlord Rules, Page 1, and the following section:

How the Scheme Operates for Landlords - An Overview

"If at the end of a tenancy there is a dispute over the apportionment of the deposit which you cannot resolve, the tenant, if dissatisfied, is entitled to complain to the Scheme Administrator. Once a dispute claim form has been submitted to the Scheme (by either you or the tenant), you will be asked to lodge the disputed amount with the Scheme Administrator until the dispute is resolved. The Scheme Administrator will hold the disputed amount in a secure client bank account.

You and the tenant can resolve the dispute at any time by mutual agreement. The tenant can obtain a court order to determine the apportionment of the disputed amount. Alternatively, the Scheme provides a dispute resolution service, available to you and the tenant at no additional charge. This service includes impartial, evidence-based alternative dispute resolution (ADR). Both you and the tenant must agree to the use of ADR, the decision of which will be binding on both parties.

The appointed adjudicator will aim to reach a decision within 28 calendar days. The Scheme Administrator will distribute the disputed deposit amount in accordance with the decision of the adjudicator, a court order or agreement between you and the tenant."

We would also like to remind members that the ADR adjudication process, if agreed to by both parties, is evidence-based. You are therefore advised to ensure that you have robust evidence in case of referral to adjudication. The time to start is before the tenant moves in, not after they have left! Members should assemble a comprehensive portfolio, including the AST agreement that clearly sets out the circumstances in which deductions will be made. The tenant should sign the agreement at the start of the tenancy to demonstrate acceptance of its terms.

You are also advised to prepare a thorough inventory, including statements of the condition of each item and, ideally, photographs or videos of key areas such as ovens, toilets, showers, and valuable pieces of furniture. These records should be signed and dated by the tenant to confirm agreement at the time of their initial occupation of the property.

And finally, some polite reminders to our Members

Since we started the Scheme in April this year, we have been answering many questions from our Members, many which are of a technical and complex nature. This has meant that other Members are experiencing delays in getting their calls answered. This can cause frustration. With a view to clarifying key issues and easing the traffic to our call centre, we have included a Frequently Asked Questions (FAQs) section in our website.

Some of the more topical questions are as follows.

Alternative address for the Tenant

We are often asked why we require you to provide an alternative address for the tenant when you protect a deposit. The answer is that it is a requirement of our contract with the government and originates with the Housing Act 2004. As a consequence we cannot change the law and have to obtain this information.

The detail is to be found in *Statutory Instrument 2007 No. 797, The Housing (Tenancy Deposits) (Prescribed Information) Order 2007*, sub-paragraph (g), item (iv), which requires deposit protection schemes to obtain at the time of protecting the deposit 'the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme

administrator for the purpose of contacting the tenant at the end of the tenancy'.

The government's explanation is this: 'The majority of decisions over the release of the deposit take place once the tenant has moved out of his rented property. This can make it difficult for the landlord to get in touch if the tenant has not provided a forwarding address. The provision of an alternative contact address, such as work, parents, other relatives etc allows the landlord to still be able to get in touch with the tenant after the tenancy has ended. This should help to ensure that the process at the end of the tenancy goes smoothly and leads to fewer cases of landlords being unable to find the tenant to agree to the release of the deposit'.

Timescale for returning the Deposit at the end of the Tenancy

Another point we need to clarify is the answer to the question 'When must deposits be paid back?' The answer is that any part of the deposit that is not disputed should be repaid to the tenant as soon as possible, but no longer than 10 days from the notification of agreement between the tenant and the landlord/agent or, in the absence of any agreement, within 10 days of the tenant requesting it.'

Best practice should mean, therefore, that if the landlord (or agent) meets the tenant on the last day of the tenancy to conduct an exit inspection together and are able to agree any justifiable deductions on the spot, the tenant should have their deposit, less any agreed deductions, returned to them within 10 days of the tenancy ending.

Extract from *The Housing (Tenancy Deposits) (Prescribed Information) Order 2007*

The following extract from Statutory Instrument number 797 of 2007 is provided here for information purposes only. It is the responsibility of the landlord to provide the required information to the tenant within 14 days of taking and holding the deposit.

Tenancy Deposit Solutions provides only part of the required information that you should provide to the tenant in the form of a Deposit Protection Certificate and supporting documents.

As appropriate, you should take legal advice as to the provision of other information not provided by Tenancy Deposit Solutions.

Prescribed information relating to tenancy deposits

2. (1) The following is prescribed information for the purposes of section 213(5) of the Housing Act 2004 ("the Act")
- (a) the name, address, telephone number, e-mail address and any fax number of the scheme administrator (b) of the authorised tenancy deposit scheme (c) applying to the deposit;
 - (b) any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act (d);
 - (c) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy (e) ("the tenancy");
 - (d) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
 - (e) the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;
 - (f) the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and
 - (g) the following information in connection with the tenancy in respect of which the deposit has been paid:
 - i. the amount of the deposit paid;
 - ii. the address of the property to which the tenancy relates;
 - iii. the name, address, telephone number, and any e-mail address or fax number of the landlord;
 - iv. the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;
 - v. the name, address, telephone number and any e-mail address or fax number of any relevant person;
 - vi. the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and
 - vii. confirmation (in the form of a certificate signed by the landlord) that-
 - (aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and
 - (bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.
- (2) For the purposes of paragraph (1)(d), the reference to a landlord or a tenant who is not contactable includes a landlord or tenant whose whereabouts are known, but who is failing to respond to communications in respect of the deposit.
- (a) 2004 c.34. The powers conferred by section 213(5) and (10) and 250(2)(b) are exercisable, as respects England, by the Secretary of State and, as respects Wales, by the National Assembly for Wales. See the definition of the "appropriate national authority" in section 261(1) of the Act.
 - (b) For the meaning of "the scheme administrator" see section 212(3) of the Act.
 - (c) For the meaning of "tenancy deposit scheme" see section 212(2) of the Act.
 - (d) For amendments to Schedule 10 to the Act, see the Housing (Tenancy Deposit Schemes) Order 2007 (S.I. No. 2007/796).
 - (e) By section 212(8) of the Act "shorthold tenancy" means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of the Housing Act 1988 (c. 50).

EXPLANATORY NOTE (This note is not part of the Order)

Under section 212 of the Housing Act 2004 ("the Act") the appropriate national authority (being, in England, the Secretary of State, and in Wales, the National Assembly for Wales) must make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies.

Section 213 of the Act sets out requirements relating to tenancy deposits. Where a landlord receives a deposit in connection with a shorthold tenancy, he must, within 14 days of the date on which the deposit is received, comply with any initial requirements imposed by the scheme and give prescribed information to the tenant and any person who paid the deposit on behalf of the tenant.

This Order, which applies to England and Wales, prescribes the information that the landlord is required to give. The information relates to the authorised tenancy deposit scheme applying to the deposit, to compliance by the landlord of any initial requirements imposed on him by the scheme and to the operation of the provisions contained in sections 212 to 215 and Schedule 10 of the Act."