



EXPERT ADVICE

Guide for landlords using a letting agent

If you are a landlord who has instructed a letting agent to protect your tenant's deposits on your behalf then you should read this important information.

GUIDE TO LANDLORDS USING A LETTING AGENT

This leaflet is your guide to tenancy deposit protection (“TDP”) legislation.

It explains:

- Your obligations and responsibilities
- Your agent’s responsibilities
- Fraudulent and insolvent agents
- Details of mydeposits key processes

Even though you have instructed a letting agent to protect the tenant’s deposit, you are always ultimately legally responsible for the deposit.

What is Tenancy Deposit Protection?

Since the 6 April 2007 all landlords and letting agents who take a deposit from their tenant on an assured shorthold tenancy (AST) in England and Wales must protect it in a government-authorised deposit protection scheme within 30 days of receiving it from the tenant.

The Housing Act 2004 states that the deposit remains the tenant’s money, regardless of the fact they have handed it to you or your letting agent. It was introduced to help ensure that tenants are able to recover their deposit at the end of the tenancy, provided they honour the terms of their tenancy agreement.

The deposit protection schemes

There are two types of government-authorised tenancy deposit protection scheme available:

- 1 The Custodial scheme: The landlord or agent passes the deposit to the scheme to hold until the end of the AST.
- 2 Insurance-based schemes: landlords or agents hold the deposit themselves for the duration of the tenancy. A fee is paid to the scheme to protect the tenant’s deposit. If a deposit dispute is raised, the landlord or agent must lodge the disputed amount with the scheme until the dispute is resolved.

About mydeposits insurance based deposit protection

mydeposits provides an insurance based deposit protection scheme.

Landlords and agents can join the mydeposits insurance based scheme and then pay a deposit protection fee to protect each tenant deposit. This protection enables them

to hold on to the deposit in their bank account for the duration of the tenancy, and then return the agreed amount to the tenant at end of their stay.

mydeposits does not physically hold the tenant’s deposit unless a deposit dispute is initiated at the end of the tenancy. Your letting agent keeps the deposit in a segregated bank account at all other times.

The tenant’s deposit that is protected with mydeposits is not specifically insured. mydeposits is the insured party and this enables us to claim on our insurance policy and pay the tenant should your agent fail to provide the disputed amount to us when requested to do so.

An agent’s responsibilities when using the insurance based scheme

When the tenant hands the agent their deposit, the agent must pay a deposit protection fee to legally protect the deposit within 30 days of collecting it.

NOTE:

As a condition of mydeposits membership, your agent must hold all tenant deposits in a segregated client money account for the duration of the tenancy agreement. All our agent members must provide us with regular evidence that they have, and use, this type of account. We take no responsibility for protected deposits that the agent does not hold in a segregated client money account.

All deposits that your agent holds are non-transferable and must be held by your letting agent. If your agent passes the deposit onto you to hold then you must join mydeposits as a landlord member.

NOTE: Your responsibilities explained

Even though you have instructed a letting agent to protect the tenant's deposit, you are always ultimately legally responsible for the deposit and its return to the tenant at the end of the AST (if they are entitled to it).

Unfortunately if the agent becomes insolvent, acts fraudulently or ceases trading you, the landlord are liable by law for the return of the deposit to the tenant, which is why we strongly recommend you use a reputable agent and ensure they use a segregated bank account. It is also the ultimate responsibility of the landlord to ensure that the deposit is protected and that certain key information about the deposit protection called the 'Prescribed Information' is passed to the tenant.

If you fail to co-operate, within our dispute resolution timescales, and the default dispute resolution service finds in favour of the tenant, mydeposits will make the payment to the tenant and will then recover the costs from you.

What is the Prescribed Information?

This includes details about the scheme used to protect the deposit, instructions about disputes and key contact information. We provide our members with the majority of this information in a document that is produced when your agent protects a new deposit, along with the Information for tenants guide. The Prescribed Information must be given to your Tenant within 30 days of the deposit

being received. Please see the Landlord's section of the mydeposits website for more information.

NOTE: What are the penalties for failing to protect the deposit?

The tenant can take you, the landlord to Court if the agent has failed to protect the deposit or failed to provide them with 'Prescribed Information'.

Failure to protect a deposit can result in the following penalties should the tenant decide to take action:

- You will be unable to obtain a court order to regain possession of the property (under Section 21 of the Housing Act 1988) unless and until the deposit is protected.
- You will be required to either return the deposit to the tenant or to lodge the full amount with an authorised custodial tenancy deposit scheme.
- You may be instructed to pay the tenant compensation between one and three times the deposit amount within 14 days.

How does my agent protect tenant's deposits with mydeposits?

Your agent will register the details of the AST (name of tenants, dates and the amount of deposit) and either lodge the money with us or pay the appropriate deposit protection fee to legally protect the deposit.

A document that proves the protection is produced following the successful protection. It should be given to your Tenant by the Agent along with mydeposits Information for Tenants leaflet. The document must be signed by either you as Landlord or the Agent, confirming that all the details are correctly recorded. The Tenant should also sign it to confirm the details too.

NOTE:

mydeposits recommends that the contract you have with your agent includes robust terms to ensure that all statutory obligations for deposit protection and the 'Prescribed Information', for which you are ultimately liable, have been satisfied.

Neither you nor the tenant can hold mydeposits responsible for any failure to provide the 'Prescribed Information'.

At the end of the tenancy

At the end of the tenancy the tenant must ask the agent for their deposit back. Both parties can then discuss the amount of deposit to be returned, including any necessary deductions to the deposit.

Once it's returned, the deposit (minus any agreed deductions) must be unprotected with mydeposits. We will then write to the tenant at the 'alternative address' given to us by the agent confirming the deposit unprotection. Your agent can update the tenant's alternative address online right up until the point of unprotection. The alternative address is one of the requirements of the

'Prescribed Information'. Please ensure, wherever practicable, that:

- 1 The agent tells you about the return of the deposit.
- 2 The deposit is not repaid without your permission.

Some agents render charges against the deposit at the end of the AST. These charges could form part of any dispute raised by the tenant. The tenant may hold you responsible for these charges.

If the same tenants wish to renew their stay and sign a new fixed-term AST agreement then your agent must re-protect the deposit. The original protection will cease. The only exception is if the existing tenant stays on a rolling statutory periodic tenancy agreement. If you fail to re-protect the deposit then it will be legally regarded as unprotected and penalties may occur.

NOTE: What is a deposit dispute?

Your tenant and agent may not agree over the amount of deposit to be returned at the end of tenancy. In the unlikely event of this happening, mydeposits offers a free and independent dispute resolution service to settle deposit disputes between the tenant and the agent. The service is completely evidence based; it is not mediation, arbitration or counselling. Your agent must provide evidence to justify any deductions to the deposit. The adjudicator will then analyse the evidence submitted and make a binding decision as to how the deposit should be distributed. There is no obligation to use ADR but it is available at no additional cost.

Using our insurance protection scheme a tenant cannot raise a dispute until 10 days after the property has been vacated and they have formally requested the return of the deposit. After the initial 10 day period has passed, the tenant has up to three months from the date of vacating the property to raise a deposit dispute. If your tenant has not raised a dispute within this period your agent can then release the deposit to you.

When a deposit dispute is raised, your agent must lodge the disputed amount with mydeposits for safekeeping until the dispute is resolved. The entire dispute resolution service should not exceed 60 days.

If your agent goes bust or fails to comply with mydeposits during this process for whatever reason, you will be liable, so it's important you understand our processes.

Some landlords and their agents have an agreement where the agent protects the deposit and collects the rent but leaves the landlord to manage the property and deal with the check-in and check-out processes. If a deposit dispute is raised in this circumstance we will only deal with the agent member directly and not with the landlord. You will have to provide evidence to your agent to submit and ensure they meet the strict deadlines of the dispute resolution process.

What happens if my agent's mydeposits membership is cancelled?

Under the Housing Act we are required to continue to protect all deposits for a three month period from the day on which the agent leaves mydeposits. This period allows adequate time for the agent to make alternative arrangements for the protection of existing deposits.

We must give both you and the tenant at least two months notice prior to the deposit protection cover expiring with mydeposits. You as the landlord may then have to protect the deposit yourself if the agent is either not intending to, or is unable to protect the deposit with another scheme.

mydeposits does not allow transfer of deposit protection from the agent member to the landlord.

What happens if my agent goes bust or is absent?

An agent that becomes insolvent or un-contactable for whatever reason will automatically have their mydeposits membership cancelled. In this scenario we will write to both you and the tenant, advising you of the cancellation and that all deposits will automatically be unprotected in three months time from the date of cancellation.

NOTE:

If the agent becomes insolvent or is absent and unable to return the tenant's deposit then we will ask you for payment of the deposit amount. As we previously mentioned, you are always ultimately responsible for the deposit regardless of whether you have instructed an agent.

What happens if there is a dispute during this three month period?

The tenant can still raise a dispute during this three month protection period with mydeposits provided the AST agreement has ended (or they have vacated the property with your agreement).

We will still ask the agent to lodge the disputed deposit amount with us. If they do not lodge the disputed amount for whatever reason, we will guarantee the return of the disputed amount to the tenant following the ADR or court outcome. We will then look to recover the amount paid out, firstly from the agent and then from you, the landlord. This may include taking court proceedings if necessary.

The exception of the above is if your agent can prove the deposit has been transferred to another tenancy deposit protection scheme.

In order for mydeposits to pay the disputed deposit amount to a tenant, the tenant must decide to use the mydeposits ADR service or court order.

If the agent is no longer in business it is unlikely any counter-evidence will be submitted. In that situation it is possible that the tenant could establish a claim to all or part of the deposit simply because the agent failed to provide the evidence to show that the tenant was in fact not entitled to it.

It is important, therefore, to emphasise that if an agent becomes insolvent or is absent, then you will take the place of the agent in the deposit dispute and provide evidence in relation to the adjudication of the disputed amount. You will need to co-operate with the adjudication process including the dispute timescales.

If we do not receive the disputed amount from you after notification of a dispute, we will not pay any part of the deposit back to you the landlord if the adjudication process results in a decision in your favour. In those circumstances, your claim as landlord is against the agent for the balance.

What happens if I want to change agent mid-tenancy?

If you wish to change your letting agent during a tenant's stay your agent is duty bound to continue to hold and protect the deposit. You must provide the agent with evidence that you have protected the deposit in another deposit protection scheme before they release the deposit to you. All three government-authorized schemes are set up to ensure you are able to switch schemes should you wish, however proof of the new protection must be supplied before the deposit is unprotected. mydeposits will write to your tenants informing them their deposit protection has ended with our scheme.

Why penalise me, the landlord when it's the agent who defaulted on the deposit?

It is a common law principle, (backed up by Section 212(9) of the Housing Act 2004) that the acts and omissions of the agent are treated as the acts and omissions of the landlord. The landlord chooses an agent and is liable for the acts and omissions of the chosen agent. The landlord must take responsibility for the return of the deposit if the agent defaults for any reason.

mydeposits is not a compensation scheme or client money protection scheme, therefore we do not get involved in issues between landlords and their agents.

NOTE: How can I protect myself from defaulting agents?

You should undertake independent financial checks to ensure that the agent is trustworthy and financially sound. The following financial checks should be undertaken:

- Does the agent hold deposit and rent monies in a segregated ring-fenced client money account?
Ask for evidence of this bank account and how it operates in writing, preferably from the bank.
- Is the letting agent a member of a letting agent association that has a client money bonding scheme in place?
- Does the letting agent hold client money protection insurance? Ask for evidence. You should undertake these checks on a periodic basis as the letting agent's association membership or insurance cover may lapse at any time.

Certain letting agent bodies, such as ARLA, NALS, UKALA, NAEA or RICS, require their registered firms to hold designated client accounts, have annual scrutiny of the operation of those accounts and also contribute to a client money protection scheme. Membership of a letting agent association is not compulsory. There are many agents that have no client money protection scheme in place.

Letting agents can hold client monies without any form of supervision of their business or protection for their landlords or tenants.

Contd.

If you instruct an agent without any form of client money protection you may be taking a serious and costly risk with the rent and deposit monies.

If you have any concerns over the financial security of your agent, ask to hold the deposit yourself and take your own responsibility for protecting it with a tenancy deposit scheme. Your agent cannot refuse this request.

SAFE Agent (Safe Agent Fully Endorsed) is a voluntary mark denoting that a letting agent firm protects landlord and tenant money through client money protection schemes.

NOTE:

If you have any concerns over the financial security of your agent, ask to hold the deposit yourself and take your own responsibility for protecting it with a tenancy deposit scheme. Your agent cannot refuse this request.

mydeposits agent members must meet certain criteria to join our scheme.

They must provide evidence of a current segregated client money account that's used to hold tenant deposits. This evidence must be provided upon request, and also when they first join mydeposits, and then every year during the membership renewal process.

Useful Information

About mydeposits

mydeposits is the trading name of Tenancy Deposit Solutions Limited (TDSL) and has been appointed by Communities and Local Government to administer an insurance-based tenancy deposit protection scheme. TDSL is a company jointly owned by the National Landlords Association (NLA) and HFIS plc trading as Hamilton Fraser Insurance (HFI).

Data Protection

The Department for Communities and Local Government has appointed Tenancy Deposit Solutions Limited T/A mydeposits and/or HFIS plc T/A Hamilton Fraser Insurance as a scheme administrator to act on its behalf to gather and process the information your Agent provides together with information from other services for the purpose of providing a tenancy deposit protection scheme as regulated by The Housing Act 2004. This includes the provision of Alternative Dispute Resolution.

For further information, please refer to the full Data Protection Notice at the end of the Scheme Rules, available as a download from our website, or contact mydeposits on 0333 321 9401. Alternatively, you can email dataprotectionact@mydeposits.co.uk or write to:

Business Implementation Manager, Hamilton Fraser Insurance, Premiere House, 1st Floor, Elstree Way, Borehamwood WD6 1JH

Contact Details

SAFE Agent

PO Box 1174, Cheltenham GL50 9TQ

Tel: 0845 519 7992 www.safeagents.co.uk

UKALA: UK Association of Letting Agents

Skyline House-2nd Floor, 200 Union Street, London SE1 0LX

Tel: 020 7820 7900 www.ukala.org.uk

ARLA: Association of Residential Letting Agents

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick CV34 6LG

Tel: 01926 496800 www.arla.co.uk

NAEA: National Association of Estate Agents

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick CV34 6LG

Tel: 01926 496800 www.naea.co.uk

RICS: Royal Institution of Chartered Surveyors

Parliament Square, London SW1P 3AD

Tel: 0870 333 1600 www.rics.org

NALS: The National Approved Letting Scheme

Tavistock House, 5 Rodney Road, Cheltenham GL50 1HX

Tel: 01242 581712 www.nalscheme.co.uk

my
deposits

DEPOSIT PROTECTION

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