

mydeposits

Conditions of deposit disputes

Custodial based tenancy deposit protection

First edition - Effective from April 2016

Introduction

These conditions of deposit disputes are an addendum to the mydeposits scheme rules and set out the process that will occur when a deposit dispute is raised with the scheme. Any definitions from the scheme rules follow to these conditions of deposit disputes.

These conditions of deposit disputes set out the legislative requirements related to the raising of a deposit dispute, the responsibilities of a member when the deposit dispute is raised and how the scheme will deal with the deposit dispute including its resolution.

The tenant will be required to agree to comply and abide by these conditions of deposit disputes when raising a deposit dispute with the scheme.

The scheme offers a free Alternative Dispute Resolution (ADR) service which is an alternative method to resolving a dispute through the court.

The scheme actively encourages its use as a method of deposit dispute resolution. In order to use the ADR service both parties must agree to its use.

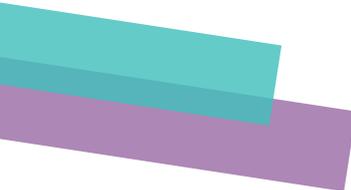
By accepting to use the scheme's ADR service (and having the deposit dispute accepted by the scheme) the parties will be given the opportunity to present their case and evidence to a fully trained and qualified adjudicator. The adjudicator will analyse the evidence submitted and make a binding decision as to how the deposit should be distributed.

There is no right for any party to appeal a decision of an adjudicator through the scheme. The decision is final and binding on the parties and the scheme.

Please refer to the relevant scheme information leaflet for specific dispute timescales.

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Section A:

Best practice at the end of the tenancy

- A1** At the end of the tenancy the tenant should ensure they:
- A1.1** have paid all rent up to date;
 - A1.2** have provided the scheme with their correct contact details and informed the member of their alternative contact details;
 - A1.3** have tried to contact the member to discuss and if necessary attempt to negotiate the return of the deposit;
 - A1.4** check to see if the member has made a release request; and
 - A1.5** if necessary, make a release request and then wait for the member's response.
- Only when the above has occurred can the tenant inform us that there is a deposit dispute.
- A2** At the end of the tenancy, the member should:
- A2.1** arrange for a check out of the residential property to be carried out;
 - A2.2** ensure they obtain the forwarding contact details for the tenant and remind the tenant that the deposit release will be conducted through the scheme;
 - A2.3** if necessary, inform the tenant of any proposed deductions within a reasonable period of time;
 - A2.4** where possible negotiate over any disputed deductions from the deposit with the tenant before making a release request; and
 - A2.5** if the tenant makes a release request within the required timescale.
- A3** If a member is unable to contact the tenant at the end of the tenancy we recommend the member:
- A3.1** arranges a check out of the residential property as usual and makes a note of any deductions that should be made from the deposit;
 - A3.2** using any contact details the member holds for the tenant, attempt to contact them and inform them of the proposed deductions;
 - A3.3** keep a record of all actions taken in relation to the deposit; and
 - A3.4** make a release request according to their position at the end of the tenancy.

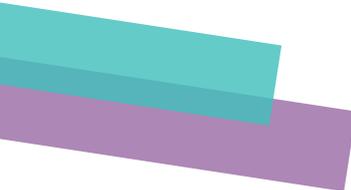
Section B:

Deposit dispute acceptance criteria

- B1** To raise a deposit dispute the tenant must have:
- B1.1** vacated the residential property;
 - B1.2** paid all rent owing under the Tenancy Agreement;
 - B1.3** if in contact with the member, reasonably attempted to negotiate the return of the deposit with the member, and be able to provide proof, if asked; and
 - B1.4** initiated the release of the deposit or agreed to the member's release request, informed us that there is a deposit dispute and agreed to use the scheme's ADR process or have the deposit dispute dealt with through the courts.
- If any of the above has not occurred and/or the tenant cannot provide us with evidence to clarify any of the above points as reasonably requested, the scheme is likely to reject the deposit dispute.
- B2** The scheme may not accept a deposit dispute, when after investigation the scheme discovers the matters are outside its remit because:
- B2.1** the tenant has not complied with B1;
 - B2.2** the deposit dispute relates to matters other than the return of the protected deposit;
 - B2.3** Court proceedings have been issued regarding any matter related to the Tenancy Agreement in question (unless they have been withdrawn or are stayed for mediation purposes or the court has subsequently directed that the matter be dealt with by the Scheme's ADR);
 - B2.4** there are allegations of fraud, police involvement, criminal activities, duress or harassment by either party to the deposit dispute;
 - B2.5** the deposit dispute being raised is vexatious, frivolous or being raised unreasonably by the tenant; and/or
 - B2.6** it would be more appropriate for the deposit dispute to be dealt with through the courts. The scheme would rely on this clause if the deposit dispute included matters that could not reasonably be decided by an adjudicator using paper based evidence or the deposit dispute contains complex matters of law.
- B3** If the scheme is not satisfied that the deposit dispute falls within its remit, in accordance with B2, then the scheme will contact both parties and provide the reasons and state how the deposit release will be dealt with:
- B4** The scheme will investigate the background to the deposit dispute and if at any stage, further information regarding a deposit dispute comes to the scheme's attention that affects the reasons why a deposit dispute was either accepted or rejected, the scheme reserves the right to change the initial decision and will provide full written reasons why the position has changed. The scheme's decision on accepting or rejecting a deposit dispute is always final.
- B5** If the deposit dispute is not considered valid by the scheme, the parties will be informed as soon as is reasonably practicable.

Joint tenants

- B6** If the deposit dispute relates to a joint tenancy agreement then only one tenant, who must be named on the protection, may raise the deposit dispute. This tenant does not need to be the lead tenant but must confirm the following to the scheme;
- a)** They will personally conduct all aspects of the deposit dispute pursuant to b) to e) inclusive.
 - b)** They have authority to act for all the joint tenants.
 - c)** They agree to fairly distribute the money which may be returned to him to the other joint tenants.
 - d)** They agree to indemnify the scheme against any claims or loss by the other joint tenants.
 - e)** They will notify all the joint tenants that the scheme cannot resolve any disputes between the joint tenants.



Authorised parties

- B7** At our discretion we may allow a deposit dispute to be raised and handled on behalf of a tenant by an interested party as already advised to us or someone acting as an 'authorised representative' of the tenant.
- B8** To act on their behalf, the tenant and/or the authorised party must inform us in writing and provide reasons and evidence, which may, but not exclusively, include the:
- tenant's difficulty with language or understanding the issues; and/or
 - tenant's disability or sickness or absence from the UK.
- B9** Our decision to accept or acknowledge a third party to take responsibility for the deposit dispute is final and we may require submission of identification or other evidence and documentation including any 'enduring power of attorney', 'lasting power of attorney' or other agency agreement.
- B10** If we accept the authorised representative then these conditions will be interpreted so that the definition of 'tenant' is extended to the authorised representative.
- B11** If a solicitor or any other professional representative is instructed by a party then the costs must be paid by the instructing party. The scheme will not make any award for costs related to the representation unless specified in a court order.
- B12** We may allow a deposit dispute to be handled on behalf of a private landlord member by an authorised representative. The member and/or the authorised representative must inform us in writing and provide reasons and evidence, which may, but not exclusively include the:
- member's difficulty with language or understanding the issues; and/or
 - member's disability or sickness or absence from the UK.
- B13** We will not allow a company landlord or agent member to grant authority for another party to act on their behalf in regards to a deposit dispute.

Miscellaneous provisions in relation to deposit disputes

- B14** The ADR will not resolve a dispute in excess of the amount of the held with the scheme.
- B15** Each party is responsible for any costs and/or expenses incurred as a result of the ADR. The scheme cannot make any award of costs related to the preparation of a deposit dispute.
- B16** The parties are able and encouraged to settle the deposit dispute before the adjudicator makes a decision. Both parties must provide proof of their agreement to us by way of a written and signed instruction. We may independently check the authenticity of the signed agreement.
- B17** The member is responsible for clarifying all claims to the deposit. If there is any ambiguity as to a claim or whether the claim relates to any agreed amount which has already been returned then the adjudicator will either make a request for further information, or using the evidence provided, make a decision, based on a balance of probabilities.

Section C: Dispute process

Please see the scheme information leaflet for specific timescales for each stage of the process.

Tenant raising dispute

- C1** To raise a deposit dispute with the scheme the tenant is required to:
 - C1.1** disagree with the member's release request and submit a deposit dispute with the scheme; and
 - C1.2** inform the scheme whether they wish for the deposit dispute to be resolved using the scheme's ADR service or through the courts.
- C2** The deposit dispute will not have been submitted with the scheme until the tenant receives confirmation of a unique reference number (URN) given to the deposit dispute.

Member's response to a deposit dispute

- C3** On notification of a deposit dispute the scheme will notify the member.
- C4** The member is then required to provide the reasons for any deductions to the deposit and their supporting evidence to the scheme or to confirm they wish for the deposit dispute to be resolved at court.
- C5** If the scheme is satisfied the member has received notification of the deposit dispute but does not respond to the scheme within the required time then the deposit dispute will proceed to the scheme's ADR process.

Tenant's response to member's claim to deposit

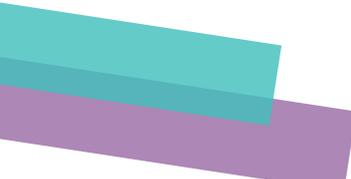
- C6** The tenant is then required to provide their response to the member's claim and any supporting evidence.

Member's final comments

- C7** The member has a further opportunity to provide comments on the tenant's claim and evidence.
- C8** The deposit dispute will continue to proceed to adjudication even if the member or tenant has failed to submit their position and/or evidence within the required timeframe. Late evidence may only be accepted at the discretion of the scheme.

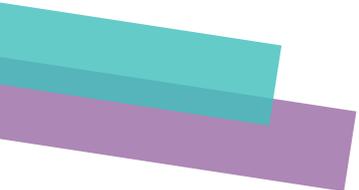
Tenant choosing court

- C9** Both parties have the option to choose to use the court to resolve the deposit dispute. Any undisputed amount will be returned to the parties and the remaining amount will be known as the disputed deposit amount.
- C10** If the tenant wishes to use the court then the scheme must be informed of this when the tenant responds to the member's release request and submits the deposit dispute.
- C11** If the member wishes to use the courts to resolve the deposit dispute they must inform the scheme when they are required to respond to the deposit release notification.
- C12** If a party issues court proceedings against the other in relation to the deposit dispute then the scheme must not be added as a defendant to the court proceedings in any circumstance. If a party does include the scheme (mydeposits or Tenancy Deposit Solutions Ltd) as a party to the proceedings then the scheme will be required to make an application to the court to remove itself from the court proceedings and will request its costs from the claimant for having to do so.
- C13** Whichever party informs us that they wish to resolve the deposit dispute at court has six months to provide the scheme with an issued court claim confirming the matter is being dealt with by the courts. If the party cannot provide us with the issued court claim then the scheme reserves the right to pay the disputed amount to the other party.
- C14** If evidence that court proceedings have been initiated is received within six months of the deposit dispute being raised the scheme will hold the disputed deposit amount until a court order is received.

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- C15** The scheme may retain the disputed deposit amount after receipt of a court order for a time to allow any appeal or leave to appeal out of time.
 - C16** A court order provided to the scheme should specifically refer to the distribution of the disputed deposit amount and give instructions for the scheme to carry this out.
 - C17** The scheme may request any further information or documentation they deem appropriate before releasing the disputed deposit amount the scheme is holding to the member or tenant. The scheme recommends a claimant's court claim form make it clear the claimant is applying for a court order for the return of a disputed deposit amount held by the scheme (mydeposits or Tenancy Deposit Solutions Ltd).

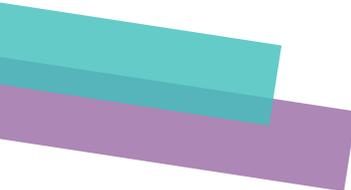
Section D: Deposit dispute evidence

- D1** The deposit remains the property of the tenant unless the member proves entitlement. The member must demonstrate and prove they are entitled to any amount they are claiming. The member is required to provide the reasons and evidence to support any deductions to the deposit. The tenant can then rebut any of the member's assertions and provide reasons and evidence as to why they are entitled to the return of the deposit in accordance with their release request.
- D2** Both parties to the deposit dispute are responsible for setting out their position clearly. This includes pointing the adjudicator to relevant evidence to support their position.
- D3** By the member and tenant agreeing to use the scheme's ADR process both parties accept that the adjudicator acts as an impartial party, and has total discretion to assess the evidence provided. Whilst the member will be provided with sufficient information in which to rebut the tenant's claim, neither party will be entitled to cross examine or be involved in the adjudication once the initial submissions have been made, unless specifically requested by the adjudicator.
- D4** All evidence submitted must be relevant and proportional to the issues in dispute. The parties can contact the scheme by telephone or email to discuss how to submit files. We will seek to remedy any issue informed to us before the relevant deadlines set by the scheme, however if these deadlines are exceeded they will only be extended in exceptional circumstances.
- D5** Members and tenants are reminded that if the issues are particularly complicated or involve issues unrelated or exceeding the amount of the deposit or where there is a large or complex amount of evidence then they may obtain a better result if the matter is resolved at court.
- D6** Neither the scheme nor an adjudicator will be liable for any error or omission in an adjudication if the error or omission arose because the claim or rebuttal or supporting evidence was incomplete, illegible, confusing, contradictory or misleading, as long as the adjudicator has taken reasonable care with regards to the consideration of the position and evidence particularly when a large amount of evidence has been supplied by a party.
- D7** The scheme recommends that all tenants, members and landlord clients of agent members read the relevant ADR guide (tenant, landlord or agent), the Deposits, Disputes and Damages guide released in association with all the tenancy deposit schemes, and the other specific guidance and case studies available on the scheme website to learn more about how to set out their claim or rebuttal and how evidence will be considered by an adjudicator. The guides and case studies can also be posted if a request is made through our call centre or by letter.
- D8** The most important documents in a deposit dispute are the Tenancy Agreement, signed and dated check in and check out reports (including inventory and schedule of condition) and also dated photographic/video evidence. Any costs incurred by the member should be supported by valid invoices, receipts or estimates.
- D9** The guides provided by the scheme give detailed information on how the evidence is considered by an adjudicator but as a summary:
 - D9.1** The check in/out report will be given more evidential weight by an adjudicator if it has either been signed by the tenant or conducted by an independent third party inventory clerk. If there is a doubt as to the independence of the report the party relying on it should set out why they believe it to be independent. If the report has not been signed by the tenant the member should explain why not and provide evidence that the tenant was given the opportunity to do so.
 - D9.2** Photographic and video evidence should be used to support the party's position as set out in the claim or rebuttal. If the photographic or video evidence is not date stamped then the adjudicator cannot be sure when it was taken. If a party intends to rely on the electronic properties of a photographic or video file the scheme recommends the files are emailed rather than uploaded.

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- D10** The scheme will not return any evidence unless we are informed on submission that the party requires it back. If we have not received any instruction at this time in relation to the evidence, we reserve the right to destroy it. Physical evidence will only be held by the scheme for two weeks from receipt and will be destroyed or shredded.
 - D11** The scheme cannot be held liable for any loss suffered as a result of us not returning the evidence when the scheme is not informed on submission that such evidence should be returned.
 - D12** We reserve the right only to return original documentation to you at your written request, and upon prior payment of postage by you.

Section E: The adjudication

- E1** When the scheme has received all of the parties evidence the scheme will forward the following dispute papers to the adjudicator:
 - E1.1** The member's claim and evidence and final comments.
 - E1.2** The tenant's rebuttal and evidence.
 - E1.3** Any other information the scheme believes is relevant to the deposit dispute that has been communicated to us.
- E2** The adjudicator has a required time period within which to make a decision from the date of receiving the dispute papers from us. (See scheme information leaflet.
- E3** On receipt of the adjudication decision we will:
 - E3.1** inform the parties and provide a copy of the decision, and
 - E3.2** make payment to the parties in accordance with the decision.
- E4** The adjudicator may ask for further information from either party should they be unable to reach a decision based upon the evidence initially provided, if further clarification is required or if they have reason to believe a further piece of evidence exists. However, as the adjudicator is required to work under tight government monitored timescales, if the adjudicator can make a decision based on the evidence provided at that point there is no requirement on the adjudicator to request further evidence.
- E5** If a member makes submissions which are not supported by evidence, the adjudicator may have no option but to disregard them and will have to award the amount back to the tenant as the member has not persuaded the adjudicator they were entitled to make the deduction from the deposit.
- E6** The adjudicator has to take fair wear and tear of the residential property and its contents into account and cannot make an award which would result in the member receiving new for old, also known as 'betterment'.
- E7** The scheme's 'Fair Wear and Tear' guide provides further information on how an adjudicator calculates fair wear and tear but they will take the following into account:
 - E7.1** the age of the item (or when decoration last occurred);
 - E7.2** the quality and condition of the item at the start of the tenancy;
 - E7.3** the length of the tenancy; and
 - E7.4** the permitted number of occupants (and to a lesser extent the type of occupants).
- E8** Any financial award made by an adjudicator to the member is for a breach of the tenancy agreement by the tenant. This will generally be a breach which has resulted in the residential property not being returned in the condition it was in at the beginning of the tenancy (taking fair wear and tear into account).
- E9** All of the scheme's adjudicators are independent from the running of the scheme, are experienced, legally trained, and have the training and ability to deliver adjudication decisions in accordance with legislative requirements governing the scheme.
- E10** The scheme's adjudicators are trained to follow a consistent approach to regularly occurring issues. This does not however mean that an adjudicator (or adjudicators) will find in exactly the same way in different cases. Although cases may seem the same to a member or tenant, every case is different and the evidence provided will be slightly different depending on the specific circumstances of that case. Adjudicators have discretion to decide what they believe to be fair in the circumstances. If one adjudicator considers a certain course of action to be fair in a case, a different adjudicator may consider a slightly different course to also be fair. Like a judge in the courts the adjudicator has discretion to make a decision based on the evidence submitted. As long as the adjudicator has followed the correct approach and explained the reason(s) for coming to a decision, then that decision will be correct even if a party is not happy with the decision.



Section F: Miscellaneous provisions

- F1** Like the scheme rules these conditions of deposit disputes may need to be updated from time to time. Notices of any changes will be posted on our website, in newsletters and by email where the member has provided us with an email address, or direct mail if not.
- F2** If the scheme makes an incorrect payment to any party to a deposit dispute as a result of an administrative error then that party is required to immediately return the amount upon request by the scheme. Failure to return the amount in accordance with a request is likely to result in legal proceedings being instigated to retrieve the outstanding amount.
- F3** The scheme's complaints procedure cannot be used to complain against or appeal an adjudication decision as any party agreeing to use the scheme's ADR service to resolve a deposit dispute means agreeing to be bound by the decision of the adjudicator.
- F4** If a tenant or member believes that an adjudicator has made an error in fact or law or an administrative mistake has been made then the person must complete our Adjudication Complaint Form. This form can be found on our website or the scheme can send a copy on request.
- F5** The scheme is not regulated by the Financial Conduct Authority (FCA). The Department for Communities and Local Government have responsibility for monitoring all the Tenancy Deposit Protection Schemes but do not have a role in individual cases or complaints.

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Scheme authorised by



Ministry of Housing,
Communities &
Local Government

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